

CALIFORNIA COASTAL COMMISSION

SOUTH CENTRAL COAST AREA
89 SOUTH CALIFORNIA ST., SUITE 200
VENTURA, CA 93001
(805) 585-1800



Item Fr12

Staff:
Staff Report:
Hearing Date:

TS-VNT
November 25, 2003
December 12, 2003

STAFF REPORT AND FINDINGS FOR RESTORATION ORDER AND CEASE AND DESIST ORDER

RESTORATION ORDER: CCC-03-RO-009

CEASE AND DESIST ORDER: CCC-03-CD-015

RELATED VIOLATION FILE: V-4-03-018

PROPERTY LOCATION: Northeast of Latigo Canyon Road, and north of and adjacent to Castro Motorway, Los Angeles County.

DESCRIPTION OF PROPERTY: The subject properties include:

Cease and Desist Order:

APN 4464-019-010 (80 acres)
APN 4464-019-008 (40 acres)
APN 4464-022-001 (25 acres)
APN 4464-022-010 (44.5 acres)
APN 4464-019-900 (which includes approximately 11 acres in the Coastal Zone)

Restoration Order:

APN 4464-019-010 (80 acres)
APN 4464-019-008 (40 acres)
APN 4464-022-001 (25 acres)
APN 4464-022-010 (44.5 acres)

PROPERTY OWNER: The Los Angeles County Assessor indicates legal ownership of the five (5) parcels is as follows:
Panorama Ranch, LLC, APN 4464-019-008
Deer Valley Ranch, LLC, APN 4464-019-010
United States Government, APN 4464-019-900
Communications Relay Corp., APN 4464-022-001
Panorama Ranch, LLC, APN 4464-022-010

VIOLATION DESCRIPTION: Unpermitted removal of major vegetation and disturbance of Environmentally Sensitive Habitat,

including but not limited to removal of native chaparral and damage to native oak trees; grading and clearing of new roads and pads; unpermitted streambed alteration, including but not limited to grading, filling, and manipulation of channel substrate, installation of metal culverts and creosote-treated railroad ties, and construction of an Arizona crossing in a blue line stream; and construction of unpermitted structures including but not limited to metal gates, and metal and wood gate posts with chain barriers set with concrete bases.

PERSONS SUBJECT TO THESE ORDERS:

- 1) James A. Kay, Jr., as representative, owner, and manager of four of the subject properties, and as member and officer of the Limited Liability Companies subject to the proposed Orders, and as President and Managing Officer of Communications Relay Corporation.
- 2) Deer Valley Ranch, LLC
- 3) Communications Relay Corporation
- 4) Panorama Ranch, LLC

RESTORATION SOUGHT:

Restoration of approximately two miles of graded and/or cleared roads and graded pads to the contours that existed prior to the unpermitted development and revegetation of all disturbed areas with appropriate native plant species typical of the disturbed sites; removal of unpermitted rock and soil fill material, creosote-treated railroad ties, and metal culverts from stream crossings and other natural drainages.

SUBSTANTIVE FILE DOCUMENTS:

ED Cease and Desist Order ED-03-CD-146
ED Cease and Desist Order ED-03-CD-147
Coastal Development Permit 4-96-084
Malibu/Santa Monica Mountains Land Use Plan
Los Angeles County General Plan
City of Malibu Local Coastal Plan
Los Angeles County Significant Ecological Area
Update Study 2000
File Background Exhibits 1 through 13

CEQA STATUS:

Categorically exempt (CEQA Guidelines (CG) §§ 15060(c)(3), 15061(b)(2), 15307, 15308 and 15321)

I. SUMMARY OF STAFF RECOMMENDATION

Staff recommends that the Commission approve Cease and Desist and Restoration Orders set forth below, to 1) cease and desist from performing unpermitted development on all of the subject properties, both private and public, and 2) require the restoration on four of the subject properties to the condition they were in prior to the occurrence of the unpermitted development. The unpermitted development includes removal of major vegetation and disturbance of Environmentally Sensitive Habitat, including but not limited to removal of native chaparral and damage to native oak trees; grading and clearing of new roads and pads; unpermitted streambed alteration, including but not limited to grading, filling, and manipulation of channel substrate, installation of metal culverts and creosote-treated railroad ties, and construction of an Arizona crossing in a blue line stream; and construction of unpermitted structures including but not limited to metal gates, and metal and wood gate posts with chain barriers set with concrete bases.

The development that is the subject of these Cease and Desist and Restoration Orders began prior to September 16, 2002, and includes unpermitted development on four privately owned parcels, which are subject to both the Restoration Order and Cease and Desist Order, and unpermitted development on a Federally owned National Park property, which is subject to the Cease and Desist Order only.

There were no permits in place for the development work performed by Respondents. The development addressed by these Orders has previously been the subject matter of two Executive Director Cease and Desist Orders. The first was issued on July 2, 2003 and expired on October 1, 2003, after which time additional development was performed on the site. Therefore, a second Executive Director Cease and Desist Order was issued on October 24, 2003. The Orders here before the Commission would both extend a prohibition on unpermitted development at the site, and would require restoration of the affected areas under Section 30811 of the Coastal Act.

Respondents admit that the development was conducted, and do not contest the fact that no permits were obtained, but assert that most of the work was exempt from the permitting requirements as “repair or maintenance activities” under Section 30610 (d) of the Coastal Act. They assert, the work was done on “pre-existing roads and trails” and therefore falls within this exemption.

There are a number of flaws with this argument. First of all, most, if not all of the roads do not appear to be pre-coastal. Moreover, even if they had been, Section 30610 only exempts “repair and maintenance activities” and the work performed here goes well beyond normal repair and maintenance activities. Section 30610 (d) reads as follows:

(d) Repair or maintenance activities that do not result in an addition to, or enlargement or expansion of, the object of those repair or maintenance activities; provided, however, that if the commission determines that certain extraordinary methods of repair and maintenance involve a risk of substantial adverse environmental impact, it shall, by regulation, require that a permit be obtained pursuant to this chapter.

Section 30610 (d) specifically limits the exemption to repair or maintenance activities which “do not result in an addition to, or enlargement or expansion of, the object of those repair or maintenance activities.” Clearly here, even if it were somehow established that some sort of path was preexisting, the work performed would have clearly enlarged and expanded it, and therefore under the very Section cited by Respondents as a defense, a permit would still be required.

However, it should be noted that, even if the work performed had been on some precoastal development, and even if it had been limited to repair or maintenance activities, a permit was clearly required under the Coastal Act. Under Section 30610 (d) and the relevant implementing regulations, a permit is clearly required even for repair and maintenance, if it occurs in areas involving a risk of substantial adverse environmental impact, such as environmentally sensitive habitat areas.

Under Section 13252 (a) of the Regulations, a coastal development permit is specifically required for “[a]ny repair or maintenance to facilities or structures or work located in an environmentally sensitive habitat area” if it includes: (A) the placement or removal, whether temporary or permanent, of...any solid materials; or (B) the presence, whether temporary or permanent, of mechanized equipment. This case involves both the removal of solid materials and the presence of mechanized equipment since the unpermitted development involved placement or removal of solid materials (i.e., plants, dirt, rocks, culverts, concrete, gates, posts and chains). The unpermitted development also included the presence of mechanized equipment (wood chipper and Polaris vehicle).

This policy is reiterated in Section 13253, pertaining to improvements to structures other than single family residences, which states, in relevant part:

(b) ...the following classes of development require a coastal development permit because they involve a risk of adverse environmental effect, adversely affect public access, or involve a change in use contrary to the policy of Division 20 of the Public Resources Code:

...(2) Any significant alteration of land forms including removal or placement of vegetation...in an environmentally sensitive habitat area...

As noted above and discussed further in the full staff report, the properties which were the subject of the unpermitted development here have all been specifically designated ESHA, and therefore, even if all of Respondents’ assertions were correct, a permit was clearly required for this work.

Under Section 30810 of the Coastal Act the Commission may issue a Cease and Desist Order if it finds that any person has undertaken or is threatening to undertake any activity which requires a permit from the Commission without such a permit. The findings for this Cease and Desist

Order demonstrate that there was no permit issued for the various development activities performed at the site.

Under Section 30811 of the Coastal Act, to order restoration, the Commission must find that development has occurred without a coastal development permit, is inconsistent with the Coastal Act and is causing continuing resource damage. The findings for this Restoration Order set forth the basis for the conclusion that the development is 1) unpermitted, 2) inconsistent with the Coastal Act, and 3) causing continuing resource damage, and that, therefore, the standards for a restoration order are satisfied.

II. HEARING PROCEDURES

The procedures for a hearing on a proposed Cease and Desist Order are described in Section 13185, and procedures for a proposed Restoration Order are described in Section 13195, incorporating by reference Sections 13185 and 13186 of the California Code of Regulations (CCR), Title 14, Division 5.5, Chapter 5, and Subchapter 9. The Cease and Desist and Restoration Order hearing procedure is similar in most respects to the procedures that the Commission utilizes for permit and Local Coastal Program matters.

For a Cease and Desist and Restoration Order hearing, the Chair shall announce the matter and request that all alleged violators or their representatives present at the hearing identify themselves for the record, indicate what matters are already part of the record, and announce the rules of the proceeding including time limits for presentations. The Chair shall also announce the right of any speaker to propose to the Commission, before the close of the hearing, any question(s) for any Commissioner, in his or her discretion, to ask of any other speaker. The Commission staff shall then present the report and recommendation to the Commission, after which the alleged violator(s) or their representative(s) may present their position(s) with particular attention to those areas where an actual controversy exists. The Chair may then recognize other interested persons after which staff typically responds to the testimony and to any new evidence introduced.

The Commission should receive, consider, and evaluate evidence in accordance with the same standards it uses in its other quasi-judicial proceedings, as specified in CCR Section 13195, incorporating by reference Sections 13185, 13186, and 13065. The Chair will close the public hearing after the presentations are completed. The Commissioners may ask questions to any speaker at any time during the hearing or deliberations, including, if any Commissioner chooses, any questions proposed by any speaker in the manner noted above. Finally, the Commission shall determine, by a majority vote of those present and voting, whether to issue the Cease and Desist and Restoration Order, either in the form recommended by the Executive Director, or as amended by the Commission. Passage of a motion, per staff recommendation or as amended by the Commission, will result in issuance of the order.

III. MOTION/STAFF RECOMMENDATION OF APPROVAL/RESOLUTION

Staff recommends that the Commission adopt the following two motions:

1. A. **MOTION:**

I move that the Commission issue Cease and Desist Order No. CCC-03-CD-015 pursuant to the staff recommendation.

1. B. **STAFF RECOMMENDATION OF APPROVAL:**

Staff recommends a **YES** vote. Passage of this motion will result in issuance of the Cease and Desist Order. The motion passes only by an affirmative vote of a majority of Commissioners present.

1. C. **RESOLUTION TO ISSUE CEASE AND DESIST ORDER:**

The Commission hereby issues Cease and Desist Order No. CCC-03-CD-015, as set forth below, and adopts the findings set forth below on grounds that the development described in the order has occurred without a coastal development permit. Upon approval, the Commission authorizes and orders that the actions set forth in the Cease and Desist Order be taken.

2. A. **MOTION:**

I move that the Commission issue Restoration Order No. CCC-03-RO-009 pursuant to the staff recommendation.

2. B. **STAFF RECOMMENDATION OF APPROVAL:**

Staff recommends a **YES** vote. Passage of this motion will result in issuance of the Restoration Order. The motion passes only by an affirmative vote of a majority of Commissioners present.

2. C. **RESOLUTION TO ISSUE RESTORATION ORDER:**

The Commission hereby issues Restoration Order number CCC-03-RO-009, set forth below, and adopts the findings set forth below on grounds that the development described in the order 1) has occurred without a coastal development permit, 2) is inconsistent with the Coastal Act, and 3) is causing continuing resource damage. Upon approval, the Commission authorizes and orders that the actions set forth in the restoration order be taken.

IV. FINDINGS FOR RESTORATION ORDER CCC-03-RO-009 and CEASE AND DESIST ORDER CCC-03-CD-015

Staff recommends the Commission adopt the following findings in support of its action.

A. Description of Unpermitted Development

The development that is the subject of these Cease and Desist and Restoration Orders (hereafter “Orders”) consists of: removal of major vegetation and disturbance of Environmentally Sensitive Habitat, including but not limited to removal of native chaparral and damage to native oak trees; grading and clearing of new roads and pads; unpermitted streambed alteration, including but not limited to grading, filling, and manipulation of channel substrate, installation of metal culverts and creosote-treated railroad ties, and construction of an Arizona crossing in a blue line stream; and construction of unpermitted structures including but not limited to metal gates, and metal and wood gate posts with chain barriers set with concrete bases.

Based on inspections of the site by Commission staff, and review of aerial photographs and maps, staff estimates that approximately 10,000 linear feet of six to twenty-foot wide roads and trails have been constructed without permits on the subject properties. Two graded and cleared pads have been constructed on parcel 4464-019-010. A third graded “pad” area, which Kay’s agent Schmitz describes as the “beginning of a new road,” is located on parcel 4464-022-010. Schmitz has advised staff that the new road was graded and cleared “by mistake.”¹ Two additional level areas have been cleared of vegetation on parcel 4464-022-010 with little or no grading.

Staff estimates that approximately five acres of native vegetation, primarily native chaparral, has been cleared from the five subject properties. Brush clearance that is legally authorized and required by the L.A. County Fire Department extends to areas within 200 feet of legal, habitable structures. There are no such structures near the roads and graded pads that warrant clearance of these areas. In addition, Kay claims that the roads are pre-existing “fire roads” that predate the Coastal Act. Pursuant to the Los Angeles County Fire Department, there are no fire roads located on the subject properties other than Castro Motorway and a dirt road that crosses parcel 4464-019-900, and bisects parcel 4464-019-008 near the northwest section of the parcel. Both of these roads predate the Coastal Act and are not subject to these Orders. A map from the Los Angeles County Forester and Fire Warden, dated 1970, indicates that no other roads exist on the subject site.

The Respondents have also altered drainages on at least two of the properties, including placement of creosote-treated railroad ties and a metal culvert in a natural drainage on parcel 4464-022-001, and grading, vegetation removal, and manipulation of channel substrate to construct an Arizona crossing in a blue line stream on parcel 4464-019-008. The Respondents have installed wood and metal posts with chains across Castro Motorway, blocking an important fire road in the Santa Monica Mountains area, and across the boundary of National Park property to divide the illegally cleared road across parcels 4464-019-008 and 4464-019-900.

¹ During an on-site meeting on November 10, 2003, staff questioned Schmitz regarding a section of hillside, which had been cleared of vegetation for approximately 150 feet in length and 10 to 20 feet in width across a steep slope, and down into a blue line stream. Schmitz stated that the road was cleared “by mistake,” and indicated that the respondents believed it was a road, but stopped once they determined no road existed.

The graded roads and areas where vegetation was removed are clearly visible in photographs of the site. Much of the new roadways are located on steeply sloping portions of the site and are visible from both Latigo Canyon road and National Park lands, and at least one road has been cleared without a permit on National Park Service property.

The subject properties consist of four privately owned parcels, totaling approximately 189.5 acres of native chaparral and oak woodland in the Santa Monica Mountains of Los Angeles County. The fifth parcel is Federally owned property, which is administered by the National Park Service as part of the Santa Monica Mountains National Recreation Area.

The four privately held parcels subject to both the Restoration Order and Cease and Desist Order are described as follows: Los Angeles County APN 4464-022-001, a 25-acre parcel owned by Communications Relay Corp, which includes a portion of legally existing Castro Motorway and a "pre-Coastal" driveway entering the site from Castro Motorway; APN 4464-022-010, a 44.5-acre parcel owned by Panorama Ranch, LLC, located adjacent to and east of APN 4464-022-001, which also includes a portion of legally existing Castro Motorway; APN 4464-019-010, an 80-acre parcel owned by Deer Valley Ranch, LLC, located adjacent to and to the north of APNs 4464-022-001 and 010; and APN 4464-019-008, a 40-acre parcel owned by Panorama Ranch, LLC, located to the west of APN 4464-019-010, which has a 500 foot long legally existing dirt road crossing the northwest corner of the property.

The fifth parcel, which is subject only to the Cease and Desist Order, is a publicly owned property, administered by the National Park Service, with approximately 11 acres located within the Coastal Zone. Respondents have constructed a road, approximately 450 feet long, through Park property.

B. Background

There has been prior Commission action on one of the four parcels subject to these Orders. On December 12, 1996, the Commission approved Coastal Development Permit No. CDP 4-96-084 for construction of a 250-square-foot modular home, three amateur radio antennae, chain link fencing surrounding the three antennae, a new 4,700-gallon water tank, and an entry gate, and approximately 40 cubic yards of grading, all on existing graded pads on parcel 4464-022-001. The proposed small modular home and radio antennae were intended for periodic personal use for up to four radio contests per year. CDP 4-96-084 also addressed prior violations on the property, and required removal of an unpermitted, pre-existing, two-story geodesic dome structure, an unpermitted residential trailer and various refuse dumped on site, as well as restoration and revegetation of approximately 850 feet of unpermitted extensions to the existing access road from Castro Motorway, which were created between 1989 and 1991. In this action, the Commission recognized approximately 970 linear feet of roadway on parcel 4464-022-001 entering the parcel from Castro Motorway.

In addition, between 1989 and 1991, approximately 1.5 acres of vegetation was cleared without permits on parcel 4464-022-001. This violation was not addressed by CDP 4-96-084; however, the site was substantially revegetated by June of 2001. However, in actions that are partially the

subject matter of these Orders, Kay has subsequently cleared several thousand square feet of the re-established vegetation and has graded roads throughout the site.

On August 25, 1997, Coastal Development Permit No. 4-96-084 was issued to Mr. Peter Von Hagen. The unpermitted geodesic dome, trailer, and debris were subsequently removed pursuant to the permit; the residence and antennae were never constructed. However, restoration of the unpermitted roads was implemented in September of 1997. Since that time, the restoration efforts implemented by the previous property owner have been destroyed.

Commission staff first learned of the recent violations on the property in mid April 2003. Staff received reports that a large crew of laborers was grading new roads under the direction of Mr. James A. Kay, Jr. ("Kay"), and under the supervision of Kay's representative, Mr. Donald W. Schmitz III, of Schmitz & Associates ("Schmitz"). The work was allegedly being performed on Kay's property as well as on National Park Service land. Staff contacted Schmitz by telephone and Schmitz assured staff that the work on the property was only minor brush clearance for the purpose of locating property boundaries and for maintenance on existing roads, and was being carried out under the direct supervision of Schmitz. Staff received subsequent reports of additional unpermitted development being undertaken by Kay.

On April 17, 2003, Los Angeles County Public Works Department ("LACPWD") issued a STOP WORK, NOTICE OF VIOLATION for unpermitted cut/fill grading on parcels 4464-019-010 and 4464-022-010.

Staff conducted a site visit to the area on May 1, 2003, which confirmed that major vegetation removal and grading of roads was occurring on the site. On May 2, 2003, staff met with Schmitz at the Coastal Commission office in Ventura. Schmitz asserted that no grading had occurred on the site and stated that all roads on the property predate the Coastal Act. Staff requested that Schmitz 1) allow staff on the property for the purpose of reviewing the alleged violations, and 2) arrange for all grading and vegetation removal to cease immediately until staff had the opportunity to evaluate the situation.

On May 8, staff met at the subject properties with Mr. James A. Kay, Jr., and representatives from Schmitz, and the law firm of Gaines and Stacey ("Gaines"). Staff inspected the site and confirmed that unpermitted development had occurred, including construction of several thousand of linear feet of unpermitted roads through either grading and/or removal of native vegetation, installation of metal culverts and creosote-soaked railroad ties in a drainage, and grading and construction of an Arizona crossing in a blue line stream. The construction of the roads continued through May 8, 2003, despite the request from staff on May 2, 2003 that work on the roads cease immediately. Staff advised Kay that he was in violation of the Coastal Act and, upon completion of the inspection issued Kay a Notice of Intent ("NOI") to issue an Executive Director Cease and Desist Order, directing Kay to cease all unpermitted development on the subject properties, as well as eight (8) other parcels, including adjacent National Park Service parcels, on which unpermitted development had allegedly occurred under the direction of Kay. The NOI also directed Kay to cease use of the unpermitted new roads. Kay and Schmitz both asserted that nearly all of the properties referenced in the NOI were out of the Coastal Zone

and were therefore not under the jurisdiction of the Commission; however Kay and Schmitz both agreed to stop work on the roads.

On May 9, 2003, LACPWD issued additional STOP WORK, NOTICES OF VIOLATION for unpermitted grading on parcels 4464-019-010 and 4464-022-010.

Pursuant to the requirements of the NOI, Schmitz gave verbal assurance to staff on May 9, 2003, that unpermitted work on the site had stopped. However, Kay and Schmitz failed to provide required written assurance by the deadline given in the NOI that use of the unpermitted roads had also ceased. On May 12, 2003, Commission staff received reports that Kay was continuing to drive vehicles on the roads in violation of the NOI. On May 12, 2003, Schmitz submitted a letter asserting that work on the roads had stopped, and that they intended to provide staff with a map delineating the location of roads, although Schmitz objected to the prohibition on use of the roads.

On May 13, 2003, staff advised Schmitz that they had failed to fulfill the standard set forth in the NOI for a response that would stop issuance of the Order, since they had failed to give written assurance that use of the roads had ceased. After discussions with staff, Schmitz submitted a facsimile letter agreeing to stop use of the roads. Therefore, based on these representations of Kay's representative Schmitz, the EDCDO was not issued at that time.

On May 15, 2003, Schmitz submitted a letter alleging the NOI was deficient because 1) the Executive Director's NOI did not specify the exact locations of the unpermitted development, 2) the NOI included properties not owned by Kay, 3) Parcel 4464-019-008 is traversed by the Coastal Zone boundary, and therefore Schmitz alleged that, without a conducting a Coastal Zone boundary determination, staff had no basis for determining whether or not unpermitted development had even occurred in the within the Coastal Zone, and 4) the work conducted on the roads was exempt "repair and maintenance," and therefore not subject to coastal development permit requirements.

On June 23, 2003, Schmitz advised staff in writing that the owners intended to resume work and use of the subject roads, alleging that the roadwork and vegetation removal is beneficial to wildlife and is exempt from Coastal review.

On June 27, 2003, Commission staff issued a Notice of Intent to Commence Restoration Order Proceeding, to seek an order compelling Kay to restore the subject parcels to their pre-violation condition. The Notice included parcels 4464-019-008, 4464-019-010, and 4464-022-010. A second Notice of Intent to Commence Restoration Order Proceeding was issued on July 1, 2003, which included parcels 4464-022-001 and 4464-022-014. APN 4464-022-014, which is owned by Parkland Ranch, LLC, of which Kay is a member, is the subject of an ongoing investigation regarding alleged unpermitted development and is not covered under these proposed Orders. The notices informed Kay and the corporate entities that own the parcels that pursuant to California Code of Regulations, Title 14, Section 13191(a), the Commission intended to initiate restoration order proceedings against him, and outlined steps in the restoration order process.

On July 17, 2003, Respondents submitted a Statement of Defense pursuant to the NOI for the Restoration Order. Kay protested the Commission's actions, and asserted that no violations have occurred on any of the subject properties, and that the Commission had no legal basis for issuing a Restoration Order. The substance of the Statement is outlined in subsequent sections below.

On July 17, 2003, Kay submitted four incomplete Coastal Development Permit ("CDP") applications for parcels 4464-019-008, 4464-019-010, 4464-022-001, 4464-022-010, for brush clearance/repair and maintenance for existing agricultural roads. The applications do not address the unpermitted development, and remain incomplete as of the date of this report.

In spite of the issuance of the Executive Director Cease and Desist Order No. ED-03-CD-146 on July 2, 2003, as well as clear direction from staff regarding requirements for coastal development permits, Kay has continued to conduct unpermitted development on the subject properties.

Despite assurances from Kay, Schmitz, and Gaines that development, including use of the roads, had ceased, staff found evidence that Kay continued to use the roads in violation of the EDCDO, including driving heavy equipment on the roads. On August 15, 2003, Commission staff and Los Angeles Regional Water Quality Control Board (RWQCB) staff met with Schmitz to view the property. Staff found evidence of new heavy tire tracks matching the tire tread pattern of the six-wheel Polaris®. Development has continued on the subject parcels in violation of the Coastal Act and the EDCDO.

On July 29, 2003, staff conducted a site visit to National Park Service Parcel 4464-019-900, and located additional unpermitted development located on parcels 4464-019-900 and 4464-019-008, which was conducted at the direction of Kay and under the supervision of his agents, including unpermitted road construction resulting in removal of native chaparral vegetation, material damage to several oak trees, and placement of metal posts and chain barriers.

During on-site field meetings with Schmitz on August 4, 2003, August 15, 2003, and November 10, 2003, staff confirmed with Schmitz the location of unpermitted development on the subject properties, and advised Schmitz as to the location of a 970-foot-long existing dirt road located on parcel 4464-022-001 that predates the Coastal Act, and that was recognized by the Commission in CDP 4-96-084. Staff also found physical evidence that Kay had violated the terms of the EDCDO.

On August 26, 2003, staff informed Gaines in writing that only a 970-foot-long access road on Parcel 4464-022-001 is considered legally existing. In CDP 4-96-084, the Commission recognized that this portion of the roadway legally existed prior to the Coastal Act. Kay and Schmitz maintain that all roads were pre-existing roads; however, neither Kay nor Schmitz have produced evidence to support their claim. Regardless, even assuming that any other roads did exist on site prior to the Coastal Act, other than the 970-foot-long segment referenced above, the unpermitted development performed by the Respondents increased the size, width and/or length of such roads without a coastal permit. In addition, the Respondents constructed new culverts at streams and constructed new pads, and this constitutes new development for which there can be no vested right. Respondents have not filed a claim of Vested Rights, in accordance with the

Commission's regulations, seeking a determination by the Commission that the roads at issue were legally constructed prior to the Coastal Act.

On September 29, 2003, and September 30, 2003, staff received additional reports of work crews driving up to the Castro Peak area toward the subject properties and transporting heavy equipment, including a bulldozer and large trucks. During the afternoons, work crews were seen leaving the area, and trucks loaded with vegetation were seen leaving the site.

On October 1, 2003, Commission staff conducted a site visit to adjacent NPS property. At approximately 11:45 a.m. staff observed a six-wheel Polaris® work vehicle traveling at a high rate of speed on the unpermitted roads across parcels 4464-022-001 and 4464-022-010.

On October 7, 2003, Commission staff spoke with Ms. Donna Shen ("Shen") of Schmitz and Associates. Shen asserted that Kay had abided by the terms of the EDCDO despite the expiration of the EDCDO and denied that any work or use of the roads had occurred. Shen confirmed that Kay had recently purchased a bulldozer and stated that Schmitz was the only one with keys to the vehicle. Shen advised staff that Schmitz had taken possession of the keys to the bulldozer because Kay can be "a little difficult."

On October 16, 2003, at 2:10 p.m., NPS Rangers observed a work crew clearing and chipping vegetation from parcel 4464-019-008. NPS Rangers observed at least three laborers on site using a Polaris® work vehicle, and mechanical chipper on the parcel.

On October 20, 2003, NPS Rangers observed a work crew of at least nine (9) laborers clearing and chipping vegetation from parcel 4464-019-008. Laborers were again working on site with a Polaris® work vehicle, and mechanical chipper. NPS Rangers also located two new wooden posts set in concrete at the property boundary with NPS Parcel 4464-019-900. Staff later found evidence that corroborated the Rangers' reports.

On October 23, 2003, staff received additional reports that work crews were conducting additional roadwork on the subject properties, using a Backhoe Tractor, mechanical wood chipper, and the Polaris® vehicle.

On October 23, 2003, the Executive Director sent Respondents a Notice of Intent to 1) commence Cease and Desist Order Proceedings and 2) issue an Executive Director Cease and Desist Order (NOI) to Kay, Panorama Ranch, LLC, Deer Valley Ranch, LLC and Communication Relay Corporation, Inc., in accordance with the provisions of Coastal Act Section 30809(b). The NOI specifically required cessation of all unpermitted work at the site. It stated that the Executive Director intended to issue a CDO unless a satisfactory response was received, as referenced by Section 30809(b) of the California Coastal Act. The NOI specifically stated:

"Such a satisfactory response must include an assurance that no further development will be undertaken at the site unless specifically authorized by a permit granted by the Commission."

The NOI specifically stated that:

To prevent the issuance of the Executive Director Cease and Desist Order, you must confirm by telephone no later than 1:00 p.m., Friday, October 24, 2003, that all unpermitted development, including but not limited to the unpermitted development described above has ceased and will not resume without authorization from the Commission, and you must also submit an appropriate response by facsimile, followed by hard copy sent via U.S. Mail Service, no later than 12:00 pm (noon), Monday, October 27, 2003, including a letter of agreement, which unequivocally states:

1. That no further unpermitted development, including but not limited to construction of roads, pads, gates, streambed alteration, or removal of native vegetation will occur unless and until a permit for such activities has been issued by the California Coastal Commission and any necessary work plans have been approved; and
2. That no further use of the unpermitted roads on parcels 4464-019-008, 4464-019-101, 4464-022-001, 4464-022-010 and 4464-019-900 will occur unless and until such time as such use were to be legally authorized by the Commission.
3. A COMPLETE Coastal Development Permit Application will be submitted to the California Coastal Commission on or before November 5, 2003, proposing restoration of all unpermitted development on the subject properties, including but not limited to restoration of unpermitted roads, graded and cleared pads, streambed alterations including damage to oak trees, as applicable, or areas where native vegetation was removed, on parcels 4464-019-008, 4464-019-101, 4464-022-001, and 4464-022-010.
4. A comprehensive interim erosion control plan to stabilize and control erosion from exposed cut and fill slopes on parcels 4464-019-008, 4464-019-101, 4464-022-001, and 4464-022-010 will be submitted to the California Coastal Commission on or before November 5, 2003 and after notification of approval by Commission staff, the plan shall be fully implemented within 10 days.
5. All unpermitted gates, gateposts, and chain barriers, will be removed from the subject properties no later than 5:00 p.m., Thursday, October 30, 2003, and that removal of these unpermitted objects shall be completed by hand tools, without the use of motorized vehicles or other heavy mechanical machinery.

On October 24, 2003, Kimberly Rible ("Rible") of Gaines & Stacey, LLC, informed staff by telephone that the subject property owners did not intend to comply with the request in the Notice of Intent to confirm that the unpermitted development described in the Notice has ceased and would not resume without authorization from the Commission. Therefore, Kay, Panorama Ranch, LLC, Deer Park Ranch, LLC and Communications Relay Corporation did not respond to the Notice of Intent in a "satisfactory manner", as required by section 30809 of the Coastal Act.

The activities referenced herein are within the Coastal Zone and within the Commission's jurisdiction. Any development conducted therein requires a coastal development permit from the Commission under section 30600 of the Coastal Act. No CDP was obtained. Failure to obtain a CDP is a violation of the Coastal Act and can subject persons performing such development to remedies in Chapter 9 of the Coastal Act, including the issuance of Executive Director Cease and Desist Orders under Section 30809 of the Coastal Act.

On October 24, 2003, the Executive Director issued Executive Director Cease and Desist Order ("EDCDO") No. ED-03-CD-147, directing Kay to cease all unpermitted development on the subject parcels. The EDCDO was issued in response to notification by Gaines that Kay did not intend to comply with the request to stop unpermitted development in the Notice of Intent.

On October 27, 2003, Gaines submitted written correspondences advising staff that Kay was unwilling to comply with the NOI. Gaines also stated that the Respondents demanded "the Commission retract the CDO immediately on the basis that they have not violated the Coastal Act." Gaines also requested that the Commission address each of the parcels separately, asserting that the Respondents are entitled to separate hearings for each of the subject properties.

On November 10, 2003, Commission staff met with Deputy Attorney General Daniel Olivas, Gaines, Rible, Schmitz, and Shen, to conduct an inspection of the subject properties. Staff confirmed that additional unpermitted development and use of the roads had occurred after issuance of the previous EDCDO. Staff asked Schmitz about the bulldozer and the continued reports of laborers and heavy equipment seen entering and leaving the area. Schmitz confirmed that Kay had recently purchased the bulldozer and was using the bulldozer and other heavy equipment to clear brush on adjacent property and to provoke the residents in the area. Schmitz also recanted his prior assertions that he was supervising Kay's laborers.

C. Admissions:

1. Kay admits he is "an officer of Park Lands Ranch, LLC, Deer Valley Ranch, LLC, Panorama Ranch, LLC and Communications Relay Corporation (the "Kay entities")." (Kay Declaration, exhibit N to the July 17, 2003 Statement of Defense, and Statement of Defense p. 1).
2. Kay admits that the Kay entities own the properties "which are the subject of the California Coastal Commission's... [Restoration Order] Notices of Intent." (Kay Declaration, exhibit N to the July 17, 2003 Statement of Defense, and Statement of Defense pgs. 3-4).
3. Kay admits that work was done which "exceeded exempt routine repair and maintenance." In particular, he admits that activities on APN 4464-019-010 went beyond brush clearance and repair and that Kay's employees "made some significant cuts" into roadbeds he contends were "existing". (July 17, 2003 Statement of Defense, Letter from Fred Gaines, pgs. 7 and 11).

4. Kay admits that activities on APN 4464-019-008 also had “gone beyond repair and maintenance work.” Specifically, he admits that about 900 linear feet of roadbed work exceeded repair and maintenance. (July 17, 2003 Statement of Defense, Letter from Fred Gaines, pgs. 7 and 26).
5. Kay admits that he is an officer of another entity (LT-WR, LLC) which owns other property in the immediate vicinity of the properties which are the subject of these Orders, which has had extensive dealings with the California Coastal Commission, including addressing Coastal Act violations. (Kay Declaration, exhibit N to the July 17, 2003 Statement of Defense, and Statement of Defense, pgs 2-3).
6. Kay admits that “In early 2003, [he] began undertaking work on the Properties” to “clear brush” along what he alleges to be “existing roadways and trails.” (Kay Declaration, exhibit N to the July 17, 2003 Statement of Defense, and Statement of Defense p. 5).
7. Kay admits that “I enlisted employees to undertake the work on some of the Properties.” He notes that he “monitored these employees to ensure that Coastal Act guidelines” were “being adhered to.” (Kay Declaration, exhibit N to the July 17, 2003 Statement of Defense).
8. Schmitz told the Commission that it was true that “laborers were removing brush and clearing debris”. July 17, 2003 Statement of Defense, Letter from Fred Gaines, p.5.
9. Kay’s agent, Schmitz, has admitted that unpermitted vegetation clearance and grading conducted on parcel 4464-022-010, was completed “by mistake.” As noted on p. 5, above, during an on-site meeting on November 10, 2003 between Coastal Commission staff and representatives of Kay, staff questioned Schmitz regarding a section of hillside, which had been cleared of vegetation for approximately 150 feet in length and 10 to 20 feet in width across a steep slope, and down into a blue line stream. Schmitz stated that the road was cleared “by mistake,” and indicated that the Respondents believed it was a road, but stopped once they determined no road existed.
10. Panorama Ranch, Deer Valley Ranch, Park Lands Ranch and Communications Relay admit the "same facts which [were] admitted in the July 17th Statement of Defense." November 12, 2003 Statement of Defense, Letter from Kimberly Rible.

D. Basis for Issuance of Cease and Desist Order:

The statutory authority for issuance of this Cease and Desist Order is found in Section 30810 of the Coastal Act, which states:

(a) If the commission... determines that any person... has undertaken, or is threatening to undertake, any activity that (1) requires a permit from the commission without securing the permit or (2) is inconsistent with any permit previously issued by the commission, the commission may issue an order directing that person to cease and desist.

Section 30810 also provides that:

(b) The cease and desist order may be subject to such terms and conditions as the commission may determine are necessary to ensure compliance with this division, including immediate removal of any development or material or the setting of a schedule within which steps shall be taken to obtain a permit pursuant to this division.

E. Basis of Issuance of Restoration Order

The statutory authority for issuance of this Restoration Order is provided for in §30811 of the Coastal Act, which states:

In addition to any other authority to order restoration, the commission, a local government that is implementing a certified local coastal program, or a port governing body that is implementing a certified port master plan may, after a public hearing, order restoration of a site if it finds that the development has occurred without a coastal development permit from the commission, local government, or port governing body, the development is inconsistent with this division, and the development is causing continuing resource damage.

The Commission has the authority to order restoration of the site if it determines that the development a) has occurred without a coastal development permit, b) is inconsistent with the Coastal Act, and c) is causing continuing resource damage. Commission staff has already verified that there was no permit issued for this development, a determination that the alleged violator does not dispute. The following paragraphs provide evidence that the development is also inconsistent with the Coastal Act and is causing continuing resource damage.

Unpermitted Development is Inconsistent with the Coastal Act

The unpermitted development is inconsistent with the following resource protection policies of the Coastal Act:

a) Section 30231 (water quality),

- b) Section 30240 (environmentally sensitive habitat areas or ESHA),
- c) Section 30251 (scenic and visual qualities; minimization of natural landform alteration),
and
- d) Section 30253 (geologic stability, protection against erosion).

Description of Resource Impacts

The following paragraphs present an analysis of the respects in which the unpermitted development is inconsistent with specified resource protection policies of the Coastal Act and is causing continuing damage to resources protected by such policies.

Water Quality

Section 30231 of the Coastal Act states, in part, that “the quality of coastal waters, [and] streams appropriate to maintain optimum populations of marine organisms...shall be maintained and, where feasible, restored through, among other means, minimizing adverse effects of waste water discharges and entrainment, controlling runoff [and] preventing depletion of ground water supplies and substantial interference with surface water flow.” Grading and vegetation removal on the site has removed surface vegetation, ground cover, subsurface rootstock, and left substantial areas of bare soil throughout the property, including areas with road cuts of one to ten feet high on oversteepened hillsides exceeding 60 percent slopes. These areas are highly susceptible to erosion and may contribute directly to the degradation of water quality in the surrounding coastal waters and streams through increased sediment input.

Unpermitted stream alterations were completed to facilitate vehicle crossing of the unpermitted roads, including removal of native vegetation along the stream corridors, placement of soil and rock fill material, creosote-soaked railroad ties and metal pipe culverts within natural drainages, as well as manipulation of boulders and cobbles for construction of an Arizona Crossing in a designated blue line stream near the southeast corner of parcel 4464-019-010. (Exhibit 5).

Therefore, based on these facts, the unpermitted development that is the subject of these Orders is inconsistent with Section 30231 of the Coastal Act.

Environmentally Sensitive Habitat Areas

Section 30240 of the Coastal Act states, in part, that “Environmentally sensitive habitat areas shall be protected against any significant disruption of habitat values, and only uses dependent on those resources shall be allowed within those areas.” Several natural drainages and ravines are located on site including three designated blue line streams. The area is dominated by chaparral habitat, interspersed with individual oak trees, stream channels and mature oak woodlands. The unpermitted grading and vegetation clearance caused the direct removal and discouragement of the growth of watershed cover, including native chaparral, which is Environmentally Sensitive Habitat Area (“ESHA”), resulting in a reduction in the amount and quality of the habitat and watershed cover in the area. The Commission Biologist, Dr. John Dixon, has found that healthy chaparral habitat in the Santa Monica Mountains is ESHA. Dr.

Dixon's findings are set forth in the Memorandum dated March 25, 2003, attached as Exhibit 6, and incorporated herein.

In addition to being inconsistent with Section 30240 of the Coastal Act, the unpermitted development is inconsistent with resource protection policies of the 1986 Malibu/Santa Monica Mountains Land Use Plan ("LUP"). The site consists of primarily native chaparral vegetation and has been verified by Commission staff to be ESHA. The LUP maps specifically include designated oak woodlands and significant watersheds on this site. At least two of the blue line streams identified by the U.S. Geological Survey are impacted by unpermitted development, including a graded road and Arizona crossing through a blue line stream on parcel 4464-019-008, and vegetation clearance through a blue line stream on parcel 4464-022-010. Commission Biologist Dr. John Dixon has viewed the site and confirmed that the area is substantially native chaparral ESHA (Exhibit 6).

The unpermitted roads, pads, and vegetation clearance on the subject properties are inconsistent with the policies of the Coastal Act, and far exceed the standards of development allowed pursuant to the LUP. Development on the site is not clustered and does not minimize landform alteration or disturbance to natural drainages, native vegetation, or impacts to public parklands. In fact, the roads and pads have been constructed in a diffuse manor though steeply sloping terrain and significant chaparral habitat, stream channels, and oak woodlands. It is not known if the roads will provide access to any future structures that might be proposed for the site, where the appropriate location for future structures may be, or if additional access roads will be sought to access proposed structures.

The LUP policies addressing protection of Significant Watersheds and ESHAs are among the strictest and most comprehensive set forth in the LUP. The Commission, in certifying the LUP, emphasized the importance placed by the Coastal Act on protecting sensitive environmental resources. The LUP includes several policies designed to protect ESHAs and address stream protection and erosion control, from both the individual and cumulative impacts of development. These policies include:

P68 Environmentally sensitive habitat areas (ESHAs) shall be protected against significant disruption of habitat values, and only uses dependent on such resources shall be allowed within such areas. Residential use shall not be considered a resources dependent use.

P74 New development shall be located as close as feasible to existing roadways, services, and existing development to minimize the effects on sensitive environmental resources.

P82 Grading shall be minimized for all new development to ensure the potential negative effects of runoff and erosion on these resources are minimized.

P84 In disturbed areas, landscaping plans shall balance long-term stability and minimization of fuel load. For instance, a combination of taller, deep-rooted

plants and low-growing covers to reduce heat output may be used. Within ESHAs and Significant Watersheds, native plant species shall be used, consistent with fire safety requirements.

P88 In ESHAs and Significant Watersheds and other areas of high potential erosion hazard, require site design to minimize grading activities and reduce vegetation removal based on the following guidelines:

- ✓ Structures should be clustered.
- ✓ Grading for access roads and driveways should be minimized; the standard new on-site access roads shall be a maximum of 300 feet or one-third the parcel depth, whichever is less. Longer roads may be allowed on approval of the County Engineer and Environmental Review Board and the determination that adverse environmental impacts will not be incurred. Such approval shall constitute a conditional use.
- ✓ Designate building and access envelopes on the basis of site inspection to avoid particularly erodible areas.
- ✓ Require all sidecast material to be recompacted to engineering standards, re-seeded, and mulched and/or burlapped.

P90 Grading plans in upland areas of the Santa Monica Mountains should minimize cut and fill operations in accordance with the requirements of the County Engineer.

P91 All new development shall be designed to minimize impacts and alterations of physical features, such as ravines and hillsides, and processes of the site (i.e., geological, soils, hydrologic, water percolation and runoff) to the maximum extent feasible.

P96 Degradation of the water quality of groundwater basins, nearby streams, or wetlands shall not result from development of the site. Pollutants, such as chemicals, fuels, lubricants, raw sewage, and other harmful waste shall not be discharged into or alongside coastal streams or wetlands.

As illustrated above, the unpermitted development, which is the subject of these Orders, is inconsistent with the Section 30240 of the Coastal Act or the development policies of the LUP.

Scenic and Visual Qualities; Minimization of Natural Landform Alteration

Coastal Act Section 30240 (b) states that:

Development in areas adjacent to environmentally sensitive habitat areas and parks and recreation areas shall be sited and designed to prevent impacts which would significantly degrade those areas, and shall be compatible with the continuance of those habitat and recreation areas.

Coastal Act Section 30251 states that:

The scenic and visual qualities of coastal areas shall be considered and protected as a resource of public importance. Permitted development shall be sited and designed to protect views to and along the ocean and scenic coastal areas, to minimize the alteration of natural land forms, to be visually compatible with the character of surrounding areas, and, where feasible, to restore and enhance visual quality in visually degraded areas. New development in highly scenic areas such as those designated in the California Coastline Preservation and Recreation Plan prepared by the Department of Parks and Recreation and by local government shall be subordinate to the character of its setting.

The subject properties are surrounded by the Santa Monica Mountains National Recreation Area, which is a popular visitor destination point for recreation, and includes several trails. Several hundreds of acres of public parklands and public trails lie adjacent to the subject properties, and represent a substantial public investment in adjacent open space and recreational lands. (In fact, laborers at the direction of Kay actually encroached onto National Park Service property and damaged park resources, removing native chaparral vegetation and damaging several oak trees.)

The properties are also in a highly scenic area due to the rural atmosphere, open spaces and vistas, large continuous areas of native vegetation and extensive network of publicly owned lands. The unpermitted development is contributing significantly to the degradation of scenic resources and the community character of the surrounding rural area through the alteration of the natural landform on the site's steep hillsides and ridge tops.

The roads and pads cleared on the subject properties are located in a sparsely developed area of the Santa Monica Mountains, and can be easily seen from public parklands and from Latigo Canyon Road. The LUP specifically identifies the area containing the site as a designated view shed, and Castro Peak as a significant ridgeline. Castro Peak is one of the most visible landmarks in the Santa Monica Mountains. Unpermitted construction of roads and clearance of vegetation on the subject properties degrades scenic views in this area.

With regard to the protection of visual resources, the specifically applicable LUP policies include:

P91 All new development shall be designed to minimize impacts and alterations of physical features, such as ravines and hillsides, and processes of the site (i.e., geological, soils, hydrological, water percolation, and runoff) to the maximum extent feasible.

P125 New development shall be sited and designed to protect public views from LCP-designated scenic highways to and along the shoreline and to scenic coastal areas, including public parklands. Where physically and economically feasible, development on sloped sites should be set below road grade.

P130 In highly scenic areas and along scenic highways, new development (including buildings, fences, paved areas, signs, and landscaping) shall:

- ✓ be sited and designed to protect views...
- ✓ minimize alteration of landforms...
- ✓ be landscaped to conceal raw-cut slopes...
- ✓ be visually compatible with and subordinate to the character of its setting...
- ✓ be sited so as not to significantly intrude in the skyline as seen from public viewing places.

P13 Where feasible, prohibit placement of structures that will break the ridgeline view, as seen from public places.

P134 Structures shall be sited to conform to the natural topography, as feasible. Massive grading and reconfiguration of the site shall be discouraged.

P135 Ensure that any alteration of the natural landscape from earthmoving activity blends with the existing terrain of the site and the surroundings.

As illustrated above, the unpermitted development, which is the subject of these Orders, is inconsistent with the Sections 30240 and 30251 of the Coastal Act or the development policies of the LUP.

Geologic Stability

Section 30253 of the Coastal Act states, in part, that “New development shall: (1) Minimize risks to life and property in areas of high geologic, flood, and fire hazard, [and] (2) Assure stability and structural integrity, and neither create nor contribute significantly to erosion, geologic instability, or destruction of the site or surrounding area.” The grading of roads and removal of vegetation has left substantial areas of bare soils or thinly vegetated soils exposed on steep slopes. Such areas will contribute significantly to erosion at the site. There has been no proactive revegetation of the graded areas on the site to provide erosion control or to stabilize the disturbed areas. Some of the removed vegetation has been chipped and scattered over portions of the site; however most of the roads and steep cut and fill slopes remain stripped of vegetative cover and exposed to erosion hazard.

The unpermitted graded roads and pads, which have been cleared and graded on steep slopes and through stream channels on the subject property, do not minimize landform alteration on the site, as is required by Section 30253. Roads have been graded on steep hillsides exceeding 60 percent

slopes in some sections, dislodging bedrock and soil material, which has been sidecast down slope, burying live vegetation, creating unstable, oversteepened fill slopes that are unengineered, unstable, and visibly eroding. On May 8, 2003, August 15, 2003, and November 10, 2003, staff observed boulders in excess of 24 inches in diameter lying unsecured along the fill slopes of the roads, which were easily dislodged by hand and rolled down slope. On November 10, 2003 staff inspected the cut and fill slopes along the roads and pads. Rock, soil, and vegetative material, which has been loosely piled down slope of the roads and pads, is easily dislodged and pushed down slope. Superficial excavation of sidecast fill slopes at several locations along the roads and pads revealed that pieces of the cleared vegetation, including limbs and trunks, have been buried beneath the fill material, providing inadequate support for the sidecast fill material. In some areas, rock and soil is piled up against and supported by live vegetation, including chaparral vegetation and the trunks of oak trees.

As illustrated above, the unpermitted development that is the subject of these Orders is inconsistent with the Section 30253 of the Coastal Act or the development policies of the LUP.

Unpermitted Development is Causing Continuing Resource Damage

The unpermitted development is causing continuing resource damage, as defined in Section 13190 of the Commission's regulations:

'Continuing,' when used to describe 'resource damage,' means such damage which continues to occur as of the date of issuance of the Restoration Order.

'Resource' means any resource which is afforded protection under the policies of Chapter 3 of the Coastal Act, including but not limited to public access, marine and other aquatic resources, environmentally sensitive wildlife habitat, and the visual quality of coastal areas.

'Damage' means any degradation or other reduction in quality, abundance, or other quantitative or qualitative characteristic of the resource as compared to the condition the resource was in before it was disturbed by unpermitted development."

Since the unpermitted development continues to exist at the subject property and, as described in detail in the sections above, is causing adverse impacts to resources protected by the Coastal Act that continue to occur as of the date of this proceeding, damage to resources is "continuing" for purposes of Section 30811 of the Coastal Act.

F. CEQA

The Commission finds that the cease and desist activities and removal of the unpermitted development and restoration of the property to the conditions that existed prior to the unpermitted development, as required by these Cease and Desist and Restoration Orders, is consistent with any applicable requirements of the California Environmental Quality Act (CEQA) of 1970 and will not have significant adverse effects on the environment, within the meaning of CEQA. The Cease and Desist and Restoration Orders are categorically exempt from

the requirement for the preparation of an Environmental Impact Report, based on Sections 15060(c)(3), 15061(b)(2), 15307, 15308 and 15321 of the CEQA Guidelines.

G. Allegations

1. Respondent James A. Kay, Jr., is an officer, member, and the responsible representative for Panorama Ranch, LLC, owner of APN 4464-019-008 and APN 4464-022-010, Deer Valley Ranch, LLC, owner of APN 4464-019-010, and is the President and Managing Officer of Communications Relay Corp., owner of APN 4464-022-001. Unpermitted development has been undertaken at the direction of Kay on parcels 4464-019-008, 4464-019-010, 4464-022-001, and 4464-022-010, and on United States Government parcel 4464-019-900.
2. James A. Kay, Jr., acting as the responsible representative for Panorama Ranch, LLC, Deer Valley Ranch, LLC, and Communications Relay Corporation, has undertaken development, as defined by Coastal Act Section 30106, at the subject properties, including removal of major vegetation and destruction and disturbance of Environmentally Sensitive Habitat, including but not limited to removal of native chaparral and damage to native oak trees; grading and clearing of new roads and pads; unpermitted streambed alteration, including but not limited to grading, filling, and manipulation of channel substrate, installation of metal culverts and creosote-treated railroad ties, and construction of an Arizona crossing in a blue line stream; and construction of unpermitted structures including but not limited to metal gates, and metal and wood gate posts with chain barriers set with concrete bases.
3. No exemption from the permit requirements of the Coastal Act applies to the unpermitted development on the property. Except as discussed herein, the Commission has not made a determination that the unpermitted roads and pads, which are subject to these Orders predate the Coastal Act.

CDP file No. 4-96-084 indicates legally existing development on the subject properties that the Commission recognized in CDP No. 4-96-084 predates the Coastal Act. This includes Castro Motorway, which crosses parcels 4464-022-001 and 4464-022-010, and a dirt road entering parcel 4464-022-001 from Castro Motorway. In addition, a dirt road, which crosses the northwest quadrant of parcel 4464-019-008, predates the Coastal Act.

A series of aerial photographs of the Castro Peak area, which date back to the 1920's, shows a progression of development in the area, and clearly demonstrates that the additional roads, Arizona crossing, pads and clearings on the subject properties, which are the subject of these Orders, are not established development predating the Coastal Act.

The Respondents claim that the development, which is the subject of these Orders, was "hidden" by the thick chaparral vegetation, and is thus is not visible in aerial photographs of the area. However, most of the unpermitted roads and pads lie on exposed, open terrain, and would be clearly visible in aerial photographs if they did in fact exist during the last 50 years, just as they are clearly visible in aerial photographs taken during 2002 and 2003.

Furthermore, the Respondents have not submitted a claim of Vested Rights seeking a Commission determination regarding their allegation that the roads predate the Coastal Act. Moreover, Respondents have admitted that some of the roads were only a trail prior to Kay's unpermitted development.

H. Violators' Defenses and Commission's Response

On July 17, 2003, Attorney Fred Gaines ("Gaines") submitted a Statement of Defense in response to the NOI for the Restoration Order, on behalf of "James A. Kay, Jr. ("Kay"), an officer of entities which own property in unincorporated Malibu" (Exhibit 7). On November 12, 2003, Gaines submitted a second Statement of Defense responding to allegations in the NOI for the Cease and Desist Order. Kay does not admit to any of the allegations contained in the NOIs. Kay denies that any Coastal Act violations have occurred on the subject properties. Kay acknowledges that while certain activities conducted on APN 4464-019-008 and APN 4464-019-010 "went beyond typical brush clearance, repair, and maintenance, they still constitute development that is consistent with the Coastal Act." Kay also denies that the subject properties are located within the Coastal Zone, and therefore Kay denies that the properties are within the Commission's jurisdiction to issue the proposed Restoration Order. The following sections describe the defenses contained in the Statements of Defense and set forth the Commission's response to each defense.

Respondents' Statements of Defense raised both general issues, which they would have address all parcels subject to these Orders, and some issues, which they raise with respect to particular parcels. They have indicated a desire to have the parcels addressed separately, so although much of the work appears to have been conducted across parcel boundaries and without obvious regard for legal boundaries between them, as a courtesy, our discussion below adopts their general format, and addresses both general issues and issues raised by Respondents with respect to each individual parcel.

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In the November Statement of Defense, Respondents requested separate hearings on the alleged violations on each of the five parcels to avoid undue prejudice and irrelevant evidence and to provide due process. As noted above, two of the parcels have the same owner, Panorama Ranch, LLC, and one of the parcels is not owned by any of the Respondents, but is owned by the National Park Service. In addition, Kay is a respondent against whom relief is sought for the unpermitted development on each parcel. Separate hearings are not necessary to insure a fair hearing. The staff report addresses the specific development that occurred on each parcel, and identifies and responds separately to the

defenses that Respondents assert that are specific to development on a particular parcel. Many of the issues are common to all parcels, such as the nature of the ongoing damage to coastal resources and the common defenses that Respondents raise with respect to the development on all five parcels. At the hearing, Respondents may further identify any factual issues that relate to a particular parcel or legal defense regarding a particular parcel. None of the Respondents will be prejudiced by conducting one hearing. In fact, one hearing is a more efficient way of dealing with the issues, avoids duplication of effort, and still allows for distinctions to be made regarding each of the parcels.

ALL PARCELS

Defenses Set Forth in Gaines' July 17, 2003 Cover Letter to SOD

Kay's Defense:

- A. and B. In these defenses, Kay asserts that the work performed on the subject properties is not "development" under the definition of section 30106 and therefore no violation of the Coastal Act occurred.**

Commission's Response:

As explained in more detail in this report, the unpermitted activities on the subject properties include the following, which constitute "development" pursuant to section 30106: 1) removal of large amounts of native vegetation, including chaparral, riparian vegetation and portions of oak trees constitutes "removal or harvesting of major vegetation"; 2) placement of dirt, rocks, railroad ties, culverts, concrete, posts, gates and chain barriers constitutes "placement or erection of any solid materials or structure" as well as "construction ... of any structure"; 3) grading occurred which constitutes "grading, removing, dredging, mining, or extraction of any materials"; 4) creation of roads and a stream crossing to bring vehicles onto areas of the subject properties that previously could not be accessed by vehicles constitutes "change in the density or intensity of use of land"; and 5) construction of the roads constitutes "construction, reconstruction, demolition, or alteration of the size of any structure."

Kay's Defense:

Kay also asserts that the brush clearance, repair and maintenance that was conducted occurred on existing roadways or trails that were not expanded, and that these activities were exempt "repair and maintenance" under section 30610.

Commission's Response:

This defense is based on the assertion that the unpermitted development was repair and maintenance of roads that were legally constructed prior to the Coastal Act, for which a vested right exists. The Commission has not made a determination that a vested right exists for the

roads at issue. Respondents have not filed a Claim of Vested Rights in accordance with Commission regulations seeking such a determination. Such a proceeding before the Commission would require a determination of: whether the roads at issue were legally constructed prior to the Coastal Act; whether they were abandoned and ceased to exist and, if so, whether there is a vested right to reconstruct them at this time; whether existing roads or trails were enlarged or extended and, if so, whether there was a vested right to do so; and whether under the Commission's regulations, repair and maintenance of pre-existing roads (if any) in this location requires a coastal development permit. Under the Commission's regulations (section 13252(a)(3) of Title 14, California Code of Regulations), repair and maintenance of existing development is *not exempt* from permit requirements if it is work located in an environmentally sensitive habitat area that includes (A) placement or removal of any solid materials; or (B) presence, whether temporary or permanent, of mechanized equipment. This action concerns unpermitted development that occurred in native chaparral, riparian areas, and oak woodland, which constitute environmentally sensitive habitat areas. The unpermitted development involved placement or removal of solid materials (i.e., plants, dirt, rocks, culverts, concrete, gates, posts and chains). The unpermitted development also included the presence of mechanized equipment (wood chipper and Polaris vehicle).

In addition, as discussed in more detail in this report, the available evidence indicates that the roads at issue did not exist prior to the Coastal Act, except with the possibility of a road on the National Park Service Property that was revegetated and no longer existed at the time the Respondents' unpermitted activities occurred. Therefore, since the Commission has not determined that the roads at issue were legally constructed, pre-existing roads, the disputed development is not exempt as repair and maintenance. Kay also admits that the above defenses do not apply to certain work performed on APN 4464-019-008 and APN 4464-019-010. Therefore, Kay admits that certain development that was conducted on these parcels is *not* repair and maintenance that is exempt from the permit requirements of the Coastal Act.

Kay's Defense:

Kay also asserts that all work was conducted by hand tools (rather than mechanized equipment).

Commission's Response:

This is controverted by Commission staff and National Park Service staff observations of a gas wood chipper and Polaris vehicle being used for development on the subject properties. Moreover, as noted elsewhere in this discussion, even if true, this would not provide a defense to the enforcement action at hand.

Kay's Defense:

- C. Kay asserts that he should not be liable for violating the Coastal Act because he sought legal advice before proceeding.**

Commission's Response:

While this is a factor that a court might consider in assessing civil penalties and punitive damages, it is not relevant to the determination of whether Kay conducted, supervised, ordered and/or directed unpermitted development that violated the Coastal Act. Nor is it relevant to whether Kay should be ordered to cease conducting unpermitted development that violates the Coastal Act and to restore the areas where such unpermitted development occurred. Such an order is appropriate to respond to the violations that already occurred, regardless of Kay's intent, and to insure no further violations occur. Likewise, Kay's assertion that he has complied with requests to cease all work and use of the roads is not relevant to whether Kay should be ordered to restore the areas where unpermitted development occurred. In addition, as explained in more detail elsewhere in this report, there have been observations of continuing road construction activities on the subject parcels, and an order directing Kay to cease all such unpermitted development will insure that these activities do not continue. Kay also asserts that the Commission has not provided evidence supporting its claim of ongoing biological damage. The ongoing damage to water quality, visual resources and native habitat caused by the unpermitted development is described in detail elsewhere in this report and constitutes evidence of ongoing damage to resources.

Kay's Defense:

- D. Kay asserts that the roads at issue pre-date the Coastal Act and he has a vested right under section 30608 to use, repair and maintain them without a CDP.

Commission's Response:

This is addressed above in the discussion of defenses A. and B. The Commission has not determined that such vested rights exist.

Kay's Defense:

- E. Kay asserts that the Commission's actions constitute an unlawful taking of private property under the California and United States Constitutions.

Commission's Response:

The Coastal Act requirement that a person must obtain a coastal development permit prior to conducting development in the coastal zone does not constitute an unlawful taking of property. Furthermore, this action does not constitute a final action by the Commission regarding the type or extent of allowed development on the properties. The Commission has not made a final determination on any application for a permit authorizing any residential, commercial or industrial structures or use of the properties.

Kay's Defense:

- F. **Kay asserts that the Commission's actions violated his civil rights by singling him out, by denying him use of the properties and by failing to provide due process.**

Commission's Response:

It does not violate Kay's civil rights to order that he not use roads that were constructed in violation of the Coastal Act and that he restore them. The ordered restoration is intended to eliminate the illegal development and restore the properties to the condition they were in at the time Respondents purchased the properties. The Commission hearing procedures and statutes provide procedural and substantive due process. As stated above in the response to defense E., the Commission has not made a final determination on any application for a permit authorizing any residential, commercial or industrial structures or use of the properties.

Kay's Defense:

- G. **Kay asserts that the Commission's actions constitute pre-condemnation activity with regard to the Kay properties.**

Commission's Response:

The Commission does not have the authority to acquire property through purchase or condemnation and is not involved in any efforts of another agency to purchase or condemn the subject properties. The Commission's enforcement action is not part of a strategy by the Commission to permanently preserve or acquire the subject properties. The Commission's enforcement action is intended to insure that no development occurs on the subject properties unless it is authorized in a coastal development permit, as required under the Coastal Act, and that any development on the properties will be consistent with the resource protection policies of the Coastal Act.

Kay's Defense:

Kay objects to issuance of the order because the commission has "failed to provide... any sort of hearing (either a restoration order hearing, a coastal development permit application hearing, and/or a hearing with regard to the matters contained in the CDOs)." He also claims this is a "violation of ... due process rights." He goes on to say that 30621 requires that a hearing be set no later than 49 days after the application is filed with the Commission.

Commission's Response:

It should be noted that Respondents submitted their applications for Coastal Development Permits *in response* to the enforcement action, after they had received numerous enforcement letters, including an Executive Director Cease and Desist Order. Moreover, the deadlines for hearing this late-filed application are far from run. This packet was received on Nov. 12, 2003.

This packet was, even if complete, far too late for the matter to be heard at the December hearing. The applications are not yet deemed filed at this time, under the Commission's regulations for submittals. The 30-day review period for the additional materials submitted ends on December 12 and the Commission staff will review the additional information in order to determine if the applications are complete. Once the applications are filed, assuming the applicant has submitted all necessary information, the 180 days permit streamlining act deadline would fall sometime in June, 2004.

Finally, it should be noted that the applications submitted by Respondents were for after the fact authorization of "repair and maintenance" only. They do not address in any way restoration of the site or the other measures addressed in these Orders.

While the Commission will of course address Respondents' applications in a timely way, it would be patently unfair to give their application preferential treatment, and address and hear their application before other applicants who have filed in a timely way prior to Respondents' application.

The Coastal Act clearly provides for hearings for all Commission Restoration and Commission Cease and Desist Orders, as we are doing here.

Kay's Defense:

- 1. "Kay does not know with certainty and, on that basis, denies that this parcel [all parcels] is within the coastal zone and within the Commission's jurisdiction. Based on the foregoing, the Commission has no authority under §30811 to issue a Restoration Order and no authority under §30830 to impose civil liability on Kay."**

Commission's Response:

Kay asserts that the subject properties are not within the Coastal Commission's jurisdiction; however, on May 8, 2003, Commission staff notified Kay that the properties are located in the Coastal Zone, and are therefore within the jurisdiction of the Commission. Although Kay asserts that the unpermitted development is out of the Coastal Zone, Kay has submitted portions of Real Estate property assessments prepared for the previous owner. These brochures indicate that parcels 4464-019-008, 4464-019-010, and 4464-022-010 are in the Coastal Zone. These documents were available to Kay when he purchased these properties on June 16, 2002. Parcel 4464-022-001 is farther seaward of 4464-019-008 and 010; as such, it should have been obvious to Kay that all four parcels were in the Coastal Zone and subject to the Coastal Act.

In addition, prior to April 25, 2003, Kay's representative Schmitz requested a Coastal Zone Boundary Determination from the Coastal Commission GIS/Mapping Unit in San Francisco for a separate parcel (4464-019-007). On April 25, 2003, the boundary line determination for 4464-019-007 was sent to Schmitz and Associates, and clearly indicates that the subject properties are within the Coastal Zone. Despite this determination, Kay and Schmitz continue to assert that the properties are not located within the Coastal Zone.

In addition, Kay has continued and maintained unpermitted development on an adjacent property, including unpermitted development on public parkland, which has been the subject of ongoing Commission enforcement action since 1997 and a recent settlement agreement involving the California Attorney General's Office. As such, Kay has been made well aware of the proximity of the Coastal Zone as well as the requirements for Coastal Development Permits for the development in the Coastal Zone.

Kay's Defense:

"The vegetation in the areas in question consists of mixed chaparral, and not coastal sage scrub. The dominant plant species throughout the area consist of robust shrub species that grow to more than six feet in height and form extremely dense stands (chamise, canothus, manzanita, and toyon). Mixed chaparral is not considered by any authoritative agency as either coastal sage scrub or sensitive vegetation."

Commission's Response:

Kay's consulting biologist, Mr. Steve G. Nelson, asserts that chaparral of the Santa Monica Mountains is not considered "sensitive vegetation." The Commission has found that the vegetative community of the site meets the definition of ESHA under the Coastal Act. Section 30107.5 of the Coastal Act defines environmentally sensitive areas as "Any area in which plant or animal life or their habitats are either rare or especially valuable because of their special nature or role in an ecosystem and which could be easily disturbed or degraded by human activities and developments."

On July 22, 2003, Dr. John Dixon, Coastal Commission biologist, conducted a site visit to the area, and confirmed that the site is substantially classified as ESHA (chaparral habitat). The value of chaparral habitat is well documented by the Coastal Commission. In a memorandum dated March 25, 2003, entitled, "*Designation of ESHA in the Santa Monica Mountains*" Dr. Dixon explicitly confirms, "because of its important roles in the functioning of the Santa Monica Mountains Mediterranean ecosystem, and its extreme vulnerability to development, chaparral within the Santa Monica Mountains meets the definition of ESHA under the Coastal Act."² The parcels that are the subject of these Orders are specifically included in the area described as ESHA by Dr. Dixon in this memorandum.

In adopting the local Coastal Program ("LCP") for the City of Malibu on September 13, 2002, the Commission recognized the importance of chaparral ESHA, such as the property at issue here, as an integral part of the Santa Monica Mountains ecosystem. Moreover, the LUP specifically identifies several acres of the subject properties as sensitive habitat, including oak woodlands and significant watersheds. In addition, three blue line streams identified by the U.S. Geological Survey are identified on the parcels.

² Memorandum from John Dixon to Ventura Commission staff entitled "Designation of ESHA in the Santa Monica Mountains," dated March 25, 2003.

In addition, despite the Respondents' assertion that native chaparral does not meet the definition of ESHA under the Coastal Act; other entities have similarly recognized the importance of the chaparral habitat in this area, as illustrated below.

The subject properties are surrounded by, and are contiguous with, significantly undeveloped areas of the Santa Monica Mountains region, including large tracts of National Park Service lands. The *Los Angeles County Significant Ecological Area Update Study 2000*, prepared for the Los Angeles County Department of Regional Planning, includes the subject properties in a proposed Significant Ecological Area ("SEA"), which includes approximately 99,430 acres of land in the Santa Monica Mountains.

The Los Angeles County General Plan identifies SEAs as "ecologically important fragile land and water areas that are valuable as plant or animal communities and often important to the preservation of threatened or endangered species. Each SEA includes areas that contain examples of plants and animals that cumulatively represent biological diversity. Preservation of this biological diversity is the main objective of the SEA designation and connecting important natural habitats plays an important role in maintaining biotic communities."³

The Santa Monica Mountains North Area Plan component of the Los Angeles County General Plan further states that "Coastal sage scrub, chaparral, and rock outcrops tend to support similar species, with such reptiles as western fence lizards, western whiptails, western rattlesnakes, and gopher snakes; birds such as towhees, sparrows, California thrashers, bushtits, and wrentits; and mammals such as bats, woodrats, mule deer, and bobcats."⁴

Kay's Defense:

The Roads and Trails Pre-Date The Coastal Act.

Commission's Response:

The unpermitted development that is the subject of these Orders does not predate the Coastal Act, was constructed without coastal development permits, is not exempt from coastal development permits pursuant to per § 30610 of the Coastal Act, and is therefore in violation of the Coastal Act. Respondents repeatedly refer to the work completed as "maintenance related" work on "existing" roads, but provide no persuasive documentation that the roads predate the Coastal Act. The Respondents have provided only generalized opinions from a consulting biologist that the "roads appear to have been originally graded many years ago."

³ Los Angeles County General Plan

⁴ The Santa Monica Mountains North Area Plan was prepared by the Los Angeles County Department of Regional Planning, and was adopted by the Los Angeles County Board of Supervisors, October 24, 2000.

As noted in further detail below and in attached exhibits, staff acknowledges that specific roads on parcels 4464-019-008, 4464-022-001, and 4464-022-010 predate the Coastal Act, and these “pre-Coastal” developments have been described and presented to the Respondents. However, substantial unpermitted development has occurred on each of the five parcels subject to the Cease and Desist Order, and is described in further detail below, and throughout this report.

Kay’s representative, Schmitz, has acknowledged that “mistakes” were made, including clearing of large swaths of vegetation on parcels 4464-019-008 and 4464-022-010, and removal of vegetation from a blue line stream; however Schmitz incorrectly asserts that these actions are not Coastal Act violations.

On May 8, 2003, Schmitz and Kay claimed that a “large ranching operation” existed on the properties during the 1950s, and the roads were part of an existing network of roads on the covering the subject properties. Aerial photographs provide no evidence of a ranching operation on the properties, and indicate that the alleged extensive network of roads did not exist prior to Kay’s ownership of the property. A 1953 aerial photograph submitted by Kay shows only two sections of existing road on parcel 4464-019-008. At the northwest corner of the property, a pre-Coastal Act road, which still exists today, bisects the property. The 1953 photograph also shows a graded road approximately 1,000 feet long, of which approximately 600 feet was located on parcel 4464-019-008. An additional 450 feet of road existed on what is now National Park Service land (APN 4464-019-900), purchased in 1982. By at least 1991, the roadbed on NPS property was completely revegetated and overgrown to the extent that it was no longer discernable or functional as a road.⁵ During the spring of 2003, without authorization from the National Park Service, Kay’s laborers entered onto NPS property under the supervision of Kay’s agent, Don Schmitz and cleared native chaparral and cut several oak tree branches to reopen the former road. Therefore, Kay has conducted new development without a permit to create a road in this location. In addition, Kay placed an unpermitted metal gate across the road and constructed a new road across parcel 4464-019-008 to parcel 4464-019-010.

Castro Motorway and a dirt road entering onto parcel 4464-022-001 from Castro Motorway both predate the Coastal Act by several decades. The pre-Coastal dirt road on parcel 4464-022-001 has been extended without permits and, numerous extensions have been constructed as described in sections above and below.

In addition, numerous unquantified trails have been cleared through the vegetation on the parcels. Kay’s representative Schmitz has advised staff that these unpermitted trails were constructed for the convenience of the laborer working on the roads.

Finally, Kay claims to have a vested right to the development existing on all the subject parcels. Kay has not applied for Vested Rights determination under Coastal Act Section 30608, therefore

⁵ During a meeting with Commission staff on July 28, 2003, NPS Ranger Bonnie Clarfield stated that the vegetation on the 1950s era roadbed on NPS parcel 4464-019-900 was so thick that she had to “bushwhack” to crawl through the area.

no such Vested Rights determination has been granted. Only the Commission can approve and grant a claim of vested rights. Coastal Act Section 30608 states that:

No person who has obtained a vested right in a development prior to the effective date of this division or who has obtained a permit from the California Coastal Zone Conservation Commission pursuant to the California Coastal Zone Conservation Act of 1972 (commencing with Section 27000) shall be required to secure approval for the development pursuant to this division; provided, however, that no substantial change may be made in any such development without prior approval having been obtained under this division.

Violators' Defenses and Commission's Response PARCEL 4464-019-008, PANORAMA RANCH, LLC

Kay's Defense:

"Kay should be exonerated from any responsibility for the following alleged violation regarding the Panorama Ranch Property No. 1 [APN 4464-019-008]. Neither Kay nor anyone acting on his behalf has at any time graded one or more 'fill pads' on this parcel."

Commission's Response:

Staff does not allege that illegally cleared or graded pads exist on parcel 4464-019-008. At the time of the completion of this report, no unpermitted cleared and graded pads have been identified on parcel 4464-019-008. The unpermitted pads referenced in the NOI exist on parcels 4464-019-010 and 4464-022-010. In addition, illegally cleared areas exist on parcel 4464-022-001 and 4464-022-010.

Kay's Defense:

"The majority of the work performed on the roads and trails was maintenance related and consisted of clearing and trimming the mixed chaparral and moving fallen boulders and rocks from the roadbeds. In fact, no more than .48 acres of brush was cleared from the Panorama Ranch property No. 1 or 1.2% of the entire parcel. About 900 linear feet of existing roadway was cleared."

"It is important to distinguish this parcel from the rest. On the Commission's May 8, 2003 site visit, staff was, in fact, concerned with only one portion of this parcel to the extent that Kay's activities had gone beyond repair and maintenance work (even though it was still all performed with hand tools). The area on which the work exceeded repair and maintenance activity is very small – about 900 linear feet of roadbed work. (The entire existing roadway on this parcel consists of 2,100 linear feet.) Kay acknowledges, as should the Commission, that these 900 linear feet should

be viewed differently. Any other activity on this parcel, if any, was entirely limited to brush clearance, repair, and maintenance work.”

Commission’s Response:

On May 1, 2003, staff observed a crew of laborers removing native chaparral and excavating a roadway on steep slopes on 4464-019-008. The laborers were utilizing hand tools to excavate the road and a wood chipper and a six-wheel Polaris® vehicle to ram and drive over native chaparral vegetation. On May 8, 2003, staff observed road cuts into soil and bedrock up to ten (10) feet high, streambed alteration, including grading and construction of a boulder and cobble Arizona crossing through a blue line stream channel. Vegetation in and around the stream had been completely cleared. Accordingly, staff observed construction of a new road.

On May 8, 2003, Schmitz and Kay claimed that a “large ranching operation” existed all on the property during the 1950s, and that the roads were part of a pre-existing network of roads on the property. However, Kay has not sought a determination by the Commission of whether there is a vested right for such roads and their precise location. Nevertheless, aerial photographs provide no evidence of a ranching operation or other significant development on the property predating the Coastal Act. A 1953 aerial photograph submitted by Kay shows only two sections of existing road on parcel 4464-019-008. At the northwest corner of the property, there was an access road, which still exists today, but is not the subject of these Orders. The 1953 photograph also shows a graded road approximately 1,000 feet long, of which approximately 600 feet was located on parcel 4464-019-008. Aerial photographs indicate the road was completely revegetated prior to recent road construction. Thus, new development was conducted without a permit to create a road on parcel 4464-019-008.

Based on aerial photographs of the site, 450 linear feet of roadway existed was located on what is now National Park Service land (APN 4464-019-900), which was purchased in 1982. This section of road was illegally cleared and reopened by Kay’s work crews, and is addressed in detail in subsequent sections below.

Finally, whether or not the unpermitted development was performed using only hand tools is irrelevant. The work was completed over a long period of time with work crews of several individuals. In addition, the laborers utilized a Polaris® work vehicle to transport equipment, haul soil, and drive into and knock down vegetation. A mechanical chipper was used to break down cut vegetation, and chain saws were used to cut chaparral vegetation and oak trees.

Kay’s Defense:

Neither Kay nor anyone acting on his behalf has at any time performed work on this parcel that resulted in streambed alteration, including grading or filling. Furthermore, neither Kay nor anyone action on his behalf has at any time placed new culverts or railroad ties.

Commission's Response:

A road has been graded through a designated blue line stream on parcel 4464-019-008. Boulders and cobbles have been placed across the lower section of the stream crossing to construct an Arizona crossing through a through the stream channel. Vegetation in and around the stream had been cleared to accommodate the road crossing. Staff questioned Schmitz regarding a large section of cleared brush paralleling the road near the stream; Schmitz stated that the clearance was a "mistake," and indicated that they initially thought it was the location of the roadbed. Staff questioned Schmitz regarding fresh graded road cuts, and the new sidecast rock and soil; staff pointed out to Schmitz that the road and Arizona crossing was obviously new, and asked Schmitz if he believed the road in fact did exist. Schmitz replied there may have existed "a goat trail or something."

Aerial photographs and maps of the area demonstrate that no such road existed prior to May 1, 2003. On May 8, 2003, staff inspected the roadcuts graded adjacent to the stream channel. Freshly cut, exposed and bleeding live roots were clearly visible throughout the profile of the roadcuts. Freshly cut grooves, carved by shovels and other hand tools, were observed in the road cuts, indicating the road cuts were new. Kay and Schmitz presented no evidence that the roads existed prior to the May of 2003.

Kay's Defense:

"Neither Kay nor anyone acting on his behalf has at any time performed work on this parcel resulting in destabilization of slopes."

Commission's Response:

During sites visits on May 1, 2003, May 8, 2003, August 15, 2003, and November 10, 2003, staff observed recently constructed vertical road cuts several feet in height on parcel 4464-019-008. Portions of the cut/fill grading are located on steep hillsides and ravines exceeding 60 percent slopes. Road cuts have been carved into both bedrock and soil material. Many of the road cuts are several feet in height and have been cut vertically without benefit of stabilization. Unconsolidated soil rocks, as well as cut stems and trunks of vegetation have been dumped down-slope of the graded roads. Staff observed that the sidecast fill material readily dislodges when stepped on or moved by hand. No erosion control or other slope stabilization devices were in place anywhere on the property.

Violators' Defenses and Commission's Response
PARCEL 4464-019-010, DEER VALLEY RANCH, LLC

Kay's Defense:

"Neither Kay nor anyone acting on his behalf has at any time graded one or more "fill pads" on this parcel."

Commission's Response:

Two unpermitted cleared and graded pads exist on parcel 4464-019-010 at the terminus to two access roads (Exhibit 4). The pads are located in the southwest quadrant of the property at high topographic points on the property. The westernmost pad (Pad No.1) is approximately 5,000 square feet in size (80' x 60'). The easternmost pad (Pad No. 2), is approximately 2,500 square feet in size, and includes an additional area of vegetation clearance of approximately 5,000 square feet (50'x100').

Staff inspected the two pads on November 10, 2003, and found that boulders, cobbles, and soil material had been cleared and mounded to form perimeters around each cleared site. The material around the edges of each pad is loosely stacked, unconsolidated, and easily dislodged by hand.

The locations of these pads correspond closely to the locations of two proposed building sites depicted and labeled as "proposed Building Pad" in a Property Assessment and Potential Use brochure prepared for the previous owner.

Kay's Defense:

"The majority of the work performed on the roads and trails was maintenance related and consisted of clearing and trimming the mixed chaparral and moving fallen boulders and rocks from the roadbeds." "In fact, no more than 1.03 acres of brush was cleared from the Deer Valley Ranch property, or 1.3% of the entire parcel. About 900 linear feet of existing roadway was cleared."

"It is important to distinguish the work done on the westerly portion of from the rest of the work performed on the remainder of the Deer Valley Ranch Property and on the other parcels. On the Commission's May 8, 2003 site visit, staff was, in fact concerned with the westerly portion of this parcel to the extent that Kay's activities went beyond repair and maintenance work. The area on which the work exceeded repair and maintenance activity is very small – about 900 linear feet of roadbed work. (The entire existing roadway on this parcel consists of 4,500 linear feet.) Kay acknowledges, as should the Commission, that these 900 linear feet should be viewed differently. Any other activity on this parcel was entirely limited to brush clearance, repair, and maintenance work."

Commission's Response:

As stated above, the Commission has not determined that the roads and pads on parcel 4464-019-010 predate the Coastal Act. The Respondents have not submitted a claim of Vested Rights, seeking such a determination. The roads and pads were constructed without Coastal Development permits; therefore "maintenance related" work on these roads and pads is not exempt from Coastal Development Permits pursuant to per § 30610 of the Coastal Act. During

the site visit of May 8, 2003, staff was concerned with all of the unpermitted development on all of the parcels, and found no evidence indicating that work on this property is exempt from Coastal Development Permits requirements. Kay does not specify what portion of the 4,500 linear feet of roads and pads should be viewed “differently” from the remaining development, and no evidence has been provided to substantiate his claims that the development predates the Coastal Act, or that a large ranching operation existed on the site during the 1950s.

In fact, aerial photographs, maps of the area, and statements of the previous property owners of adjacent parcel No. 4464-022-001 contradict Kay’s claims that the roads predate the Coastal Act. On September 4, 2003, and September 5, 2003, staff spoke with the former owners of parcel 4464-022-001, who owned the property during the 1950s, and continued ownership of the site through the 1980s. The previous owners advised staff that there was never a working ranch on any of the parcels, and that they had to “bushwhack” through the area due to the density of the vegetation. Aerial photographs of the parcels confirm their statements.

As noted above, staff has also obtained a copy of a “Property Assessment and Potential Use” brochure, which the Respondents indicate was prepared for the previous owner. The brochure indicates that no roads existed on parcel 4464-019-010. In fact, the brochure shows a proposed driveway, which follows a route that does not match any of the roads that Kay and Schmitz purport to be “pre-Coastal.”

During site inspections on May 8, 2003, August 15, 2003, and November 10, 2003, staff observed fresh roadcuts from one to ten feet in height on parcel 4464-019-010, and several tons of boulders, freshly broken rocks, soil, and cut stems and trunks of vegetation, dumped down slope of several sections of the newly constructed roads.

While the development existing on the westerly portion of the property is more extensive and includes the most intrusive road cuts, as well as both of the graded pads on parcel 4464-019-010, staff is concerned with *all* of the unpermitted development on all of the parcels. Staff has made no representation to Kay or Schmitz that the unpermitted development on the southeastern section of the property is not a violation. The grading, and vegetation removal and disturbance are significant violations of the Coastal Act.

Kay’s Defense:

Neither Kay nor anyone acting on his behalf has at any time performed work on this parcel that resulted in streambed alteration, grading, filling, or removal of in-channel riparian vegetation. Furthermore, neither Kay nor anyone acting on his behalf has at any time placed new culverts or railroad ties or manipulate boulders or cobbles within stream channels.

Commission’s Response:

Staff does not allege that streambed alteration has occurred on APN 4464-019-010. At the time of the completion of this report, no streambed alteration has been identified by Commission staff

on parcel 4464-019-010. As noted above and below, Commission staff has verified that unpermitted stream alteration has occurred on parcels 4464-019-008 and 4464-022-001, and that vegetation clearance has occurred within a designated blue line stream on parcel 4464-022-010. Staff does note that the excessive vegetation removal and exposure of bare soil this parcel is causing soil erosion, which will result in potentially significant adverse impacts to stream habitat in the area.

Kay's Defense:

Neither Kay nor anyone acting on his behalf has at any time performed work on this parcel that resulted in destabilization of slopes or alteration of drainages.

Kay should be exonerated from any responsibility for work performed on the remaining portions of the Deer Valley Ranch property for the following reasons. Specifically, the exempt work performed on the subject parcel consisted of the following:

- 1) Clearance and trimming of mixed chaparral from existing roadways.**
- 2) Clearance and removal of fallen rocks and boulders from existing roadbeds.**

The Roads and Trails Pre-Date The Coastal Act.

The roads and trails located on this parcel pre-date the Coastal Act (See Declaration of James A. Kay, Jr., the Biologists Report and Addendum, map, and Whittier College 1953 aerial photo, attached hereto as Exhibits N, D, C, and B.) As such, Kay has a vested right per § 30608 to use, repair, and maintain the existing roadway and does not require a CDP to continue to do so.

No Development (Except for the Westerly Portion of the Property) or Coastal Act Violations Have Occurred on the Property.

The Work performed on the property, except for the work performed on the westerly portion of this parcel, does not constitute development as defined by § 30106.

Exemptions to § 30106 are contained in §30610(d) provides exemptions from the CDP requirement.

Here, the work performed on the subject property (except for the work performed on the westerly portion of the parcel) does not constitute development as defined by § 30106 and is exempt from CDP requirements per § 30610. Courts have held for example, that development under § 30106 may include activities such as: a change in density or intensity of use of land (Stanson v. San Diego Coast Regional Commission) (App. 4 Dist. 1980) 101 Cal.App.3d 38.) a division of land (Ojavan Investors, Inc. v. California Coastal Commission, (App. 2 Dist. 1997) 54 Cal.App.4th 373), and lot line adjustments (La Fe, Inc. v. Los Angeles County (App. 2 Dist. 1999) 73 Cal.App.4th 231). All of these cases can be

easily distinguished from this situation. The brush clearing, repair, and maintenance has not resulted in a change in the density of the use of land, nor has it resulted in an addition to, or enlargement or expansion of the existing roadways or trails. The work undertaken was all preformed by hand tools (picks and shovels).

In addition, the work performed on the subject property (except for the work performed on the westerly portion of the parcel) does not constitute repair and maintenance activities that require a permit under § 13252 of Title 14 of the California Administrative Code.

Furthermore, any allegations that repair and maintenance activity occurred within 20 feet of streams and/or in environmentally sensitive habitat area are entirely untrue. There are no streams on this parcel in the vicinity of existing roads or trails. No pads have been graded.

Commission's Response:

The work completed on parcel 4464-019-010 includes construction of two pads, removal of both surface and subsurface chaparral plant material (not simply "trimming"), and construction of roads that required excavation of roadcuts up to ten feet in height. This development is not exempt from CDP requirements per § 30610 of the Coastal Act. Pursuant to section 30600 (a) of the Coastal Act, any person wishing to perform or undertake development in the Coastal Zone must obtain a Coastal Development Permit, in addition to any other permit required by law.

"Development" is defined by Section 30106 of the Coastal Act as:

"Development" means, on land, in or under water, the placement or erection of any solid material or structure; discharge or disposal of any dredged material or any gaseous, liquid, solid, or thermal waste; grading, removing, dredging, mining, or extraction of any materials; change in the density or intensity of the use of land, including, but not limited to, subdivision pursuant to the Subdivision Map Act (commencing with Section 66410 of the Government Code), and any other division of land, including lot splits, except where the land division is brought about in connection with the purchase of such land by a public agency for public recreational use; change in the intensity of water, or of access thereto; construction, reconstruction, demolition, or alteration of the size of any structure, including any facility of any private, public, or municipal utility; and the removal or harvest of major vegetation other than for agricultural purposes, kelp harvesting, and timber operations....

Thus, the above-mentioned unpermitted grading and demolition of structures constitutes development under the Coastal Act.

As noted in the sections above, the roads and pads on parcel 4464-019-010 do not predate the Coastal Act, and were constructed without coastal development permits; therefore the vegetation removal and excavation of rocks repair and maintenance of "existing" roads and is not exempt from coastal permit requirements.

Moreover, even if the Respondents were to claim a Vested Right to the roads under §30608, no such Vested Rights determination has been applied for or granted. The Respondents have not obtained a vested right before the Commission pursuant to Section 30608 of the Coastal Act. Only the Commission can approve and grant a claim of vested rights.

As noted above, staff does not allege that streambed alteration has occurred on APN 4464-019-010. However, staff does note that the excessive grading and exposure of bare soil on steep slopes is causing erosion on the parcel, which will result in potentially significant adverse impacts to stream habitat in the area.

Finally, whether or not the unpermitted development was performed using only hand tools is irrelevant. The work was completed over a long period of time with work crews of several individuals. In addition, the laborers utilized a Polaris® work vehicle to transport equipment, haul soil, and drive into and knock down vegetation. A mechanical chipper was used to break down cut vegetation, and chain saws were used to cut chaparral vegetation and oak trees.

Kay's Defense:

There Is No Ongoing Biological Damage.

There is no evidence of damage to biological resources resulting from the activities conducted by Kay on the parcel. To date, even though the Commission asserts it as its basis for issuing the Notices, the Commission has presented no evidence or report of any kind that Kay's brush clearance, repair, maintenance, or use of the roads has been detrimental to biological resources. On the other hand, Kay has presented evidence to the Commission from Biologist Steven G. Nelson that Kay's activities have not caused any marked damage to resources and, in fact, have been beneficial to the parcel and wildlife.

Commission's Response:

Biological damage has clearly occurred on the APN 4464-019-010 due to destruction of ESHA. Additionally, on May 8, August 15, and November 10, 2003, staff observed active erosion on the parcel resulting from destabilization of slopes from removal of vegetation and excavation and sidecasting of soil and rock for road construction on steep slopes. The subject properties are located at the headwaters of several drainages, including three blue line streams and at least one designated significant watershed area. Excavation and sidecasting of unconsolidated soil leads to increased sedimentation rates in adjacent streams, causing adverse impacts to fish and other aquatic wildlife, and therefore constitutes resource damage.

On the above dates, staff observed soil and rock material piled against the trunks and stems of oak trees and native chaparral species, damaging native vegetation on APN 4464-019-010.

Some chaparral plant species, including species found on this parcel, rely on underground woody structures such as woody taproots to sprout following removal of surface vegetation due to

events such as fire. Staff confirmed that subsurface plant material had been removed at various locations on the parcels, including root material. Removal of the root material of these plants will result in their failure to regenerate.

Finally, the fact that the unpermitted grading was performed using primarily hand tools does not mean a CDP was not required, since no exemption applies (see discussion above).

Kay's Defense:

There is no Basis to Issue a §30811 Restoration Order.

Section 30811 authorizes the Commission to order restoration of a site it finds three things. One, that the development has occurred without a CDP; two, that the development is inconsistent with what is allowed under the Coastal Act; and, three, that the development is causing continuing resource damage. Based on the foregoing description of the activities that took place on the parcel, nothing occurred on the remaining portion of this parcel that qualifies as development. Therefore, there has been no violation of the Coastal Act and the Commission has no basis upon which to issue a restoration order with respect to this property. In addition, the required finding that resource damage has occurred cannot be made. (See Biologist's Report and Addendum attached).

Commission's Response:

The unpermitted development meets the criteria required for the Commission to issue a Restoration Order pursuant to Section 30811. As explained in the preceding sections of this report, the roads and pads do not predate the Coastal Act; the development is inconsistent with the Coastal Act; and the development is causing continuing resource damage.

Kay's Defense:

Kay Should Not be Held Civilly Liable Under §30820. First, Kay solicited advice regarding what lawful activities he could undertake on the parcel without a CDP. After reviewing such advice, Kay was careful to operate within the limitations of the activities not requiring a CDP. Second, Kay ceased all repair and maintenance work immediately upon notice from the Commission and receipt of the Commission's May 8, 2003 Notice, and has not conducted any activities on the property since that date. (See Schmitz's May 12, May 13, and May 15 letters and Declaration of James A. Kay, Jr., attached hereto as Exhibits G, H, I, and N) Kay even abided by the Commission request that he cease using the roads, despite the Commission's lack of a legal basis for such request. Third, the Commission has presented no biological reports documenting the basis for its allegations and of evidence of ongoing biological damage to resources. (See Biologist's Report and Addendum, attached hereto as Exhibit D).

Commission's Response:

Kay did not solicit advice from Coastal Commission staff regarding what lawful development activities he could undertake without a CDP. The fact that Kay sought, and allegedly received erroneous guidance from an unidentified source does not absolve Kay of responsibility for Coastal Act violations. Kay has performed and maintained unpermitted development on adjacent property in violation of the Coastal Act, and Kay has been repeatedly advised by Commission Enforcement staff regarding requirements for coastal development permits within the Coastal Zone since 1997. In addition, in the recent past, from May 2003 until the present, Kay and his representatives have been repeatedly informed of the Coastal Act requirements as they pertain to these parcels (See Exhibits 9 through 13). Despite this, Kay has continued to conduct and maintain unpermitted development at the site.

Contrary to assurances from Kay and his representatives, staff found evidence that Kay did not abide by the terms of Executive Director Cease and Desist Order ED-03-CD-146. On August 15, 2003, staff from both the Commission and the California State Regional Water Quality Control Board located fresh tire tracks matching the tire tread of the Polaris® work vehicle on parcel 4464-019-008, adjacent to parcel 4464-019-010.

The above-referenced document by John Dixon, PhD., entitled “*Designation of ESHA in the Santa Monica Mountains*” (Exhibit 6) confirms that native chaparral habitat in the Santa Monica Mountains is ESHA. Deep-rooted chaparral vegetation provides protection from soil erosion, especially on steep slopes in the Santa Monica Mountains, holding soil intact and preventing movement of soil on steep slopes. Chaparral vegetation also protects the soil surface from direct impact from by interception of precipitation by foliage, and slowing surface runoff, and providing greater infiltration of moisture.⁶

Dr. Dixon’s memorandum has been cited and included with numerous documents approved by the Commission, including staff reports for Commission items of clients of Kay’s representative Schmitz, and has been readily available to the public.

Finally, as noted in relevant sections above, the properties are located within the Coastal Zone, and ongoing damage is occurring to resources that are afforded protections under the policies of Chapter 3 of the Coastal Act, including but not limited to water quality, environmentally sensitive wildlife habitat, and the visual quality of coastal areas.

Violators’ Defenses and Commission’s Response

PARCEL 4464-019-900, Owned by the United States Government

Parcel 4464-019-900 is public park property owned by the Federal Government as part of Santa Monica Mountains National Recreation Area, and is included in the Commission Cease and Desist Order, but is not included in the Restoration Order. On October 24, 2003, the Executive Director issued EDCDO No. ED-03-CD-147, and included parcel 4464-019-900, to halt further

⁶ Memorandum from John Dixon to Ventura Commission staff entitled “Designation of ESHA in the Santa Monica Mountains,” dated March 25, 2003, attached hereto as Exhibit 6.

damage to Park property; however it is the opinion of the Executive Director that restoration of the site should be completed under the direction of the National Park Service. Staff recommends issuance of the Cease and Desist Order to the Respondents to prevent any further unpermitted development by the Respondents on Park property.

The unpermitted development on APN 4464-019-900 was conducted and directed by James A. Kay, Jr. It appears that the unpermitted development on the public property was conducted for the benefit of Mr. Kay and the corporate entities controlled by Kay, which are identified as the owners of the properties adjacent to Park property.

The violations on this property include removal of native chaparral vegetation and material damage to oak trees to clear a restored road that existed on park property. Federal Authorities will coordinate with the CCC and Respondents to resolve the damage to Park property caused by Kay. For the portion of Park property within the Coastal Zone, staff is only proposing a Commission Cease and Desist Order at this time, and is not proposing that the Commission issue a Restoration Order. Restoration of the damage park resources within the Coastal Zone may require a coastal development permit.

During the 1950s, a section of dirt road, approximately 450 linear feet long, existed on what is now National Park Service land (APN 4464-019-900), which was purchased in 1982. By 1991, the roadbed on Park property was completely revegetated and overgrown to the extent that it was no longer discernable or functional as a road.⁷ Without permission of the National Park Service or the Coastal Commission, Kay's work crews entered onto NPS property under the supervision of Don Schmitz and cleared native chaparral and cut several oak tree branches to reopen the former road. In addition, Kay has placed unpermitted metal and wood posts, and a chain across the road and constructed a new road across parcel 4464-019-008 to access parcel 4464-019-010.

Kay's Defense:

In the Statement of Defense dated November 12, 2003, the Respondents do not offer specific defenses to the allegations against James A. Kay, Jr. for unpermitted development performed on parcel 4464-019-900. Responses are only submitted on behalf of Deer Valley Ranch, LLC, Panorama Ranch, LLC, and Communications Relay Corporation. The Respondents do cite the general assertions in the Statement of Defense submitted on July 17, 2003.

In the Statement of Defense dated November 12, 2003, Gaines indicates that Deer Valley Ranch, LLC, Panorama Ranch, LLC, and Communications Relay Corporation, object to the evidence presented to Commission staff by National Park Service Rangers, **"On the grounds that they are heresy – unsubstantiated reports, offered to prove the truth of the matter asserted. [In addition, the credibility of such 'reports' allegedly received**

⁷ During a meeting with Commission staff on July 28, 2003, NPS Ranger Bonnie Clarfield stated that the vegetation on the 1950s era roadbed on NPS parcel 4464-019-900 was so thick that she had to bushwhack to crawl through the area.

by the Commission is suspect, given strained relations between the property owner and NPS and NPS's prior unsuccessful negotiations to acquire the property from the owner's predecessor in interest.]”

To our clients' knowledge, the NPS has not closed APN 4464-019-900 to the public or imposed public use limits pursuant to Section 1.5 of Title 36 of the Code of Federal Regulations, nor has it posted signs illustrating that to walk on APN 4464-019-900 is prohibited pursuant to Section 1.10 of Title 36 of the Code of Federal Regulations. In addition, Section 2.31 of Title 36 of the Code of Federal Regulations defines trespassing as “...entering or remaining in or upon property or real property not open to the public, except with the express invitation or consent of the person having lawful control of the property or real property.” Based on the understanding that the NPS property was open to the public (and presumably still is), our clients and their agents believe that it is lawful to utilize the roads located in APN 4464-019-900.

Commission's Response:

In the Statement of Defense, the Respondents do not address the illegal clearing of the road on NPS property. The fact that the property is public parkland and is by definition open to the public, does not grant Kay the right to perform unpermitted development on Park property in violation of the Coastal Act. Kay has damaged park resources and illegally cleared a restored road on public property. Halting Kay's actions to conduct further unpermitted development and to use the illegal road is an appropriate response by both the Coastal Commission and National Park Service. Continued use of the road by Kay will further compact soils and crush vegetation on the site.

Although the road at issue across NPS property existed in 1953, aerial photographs indicate that the subject road was substantially revegetated by the late 1970s, and was completely revegetated and restored to thick chaparral vegetation by 1991. Laborers employed by Kay, and allegedly under the supervision of Schmitz, entered onto the Park property and cleared native chaparral and cut several oak tree branches to create a new road. The Respondents have not demonstrated a legal right to create a new road at this location. The Commission has not determined that the Respondents have a vested right to a road in this location, nor has Kay submitted a claim of Vested Rights, pursuant to the Commission's regulations, seeking such a determination.

Nevertheless, aerial photographs provide no evidence of a ranching operation or other significant development on the property predating the Coastal Act. A 1953 aerial photograph submitted by Kay shows only two sections of existing road on parcel 4464-019-008. At the northwest corner of the property, there was an access road, which still exists today, but is not the subject of these Orders. The 1953 photograph also shows a graded road approximately 1,000 feet long, of which approximately 600 feet was located on parcel 4464-019-008. Aerial photographs indicate the road was completely revegetated prior to recent road construction. Thus, new development was conducted without a permit to create a road on parcel 4464-019-008.

Based on aerial photographs of the site, 450 linear feet of roadway existed was located on what is now National Park Service land (APN 4464-019-900), which was purchased in 1982. This section of road was illegally cleared and reopened by Kay's work crews, and is addressed in detail in subsequent sections below.

Violators' Defenses and Commission's Response

PARCEL 4464-022-001, COMMUNICATIONS RELAY CORPORATION

Kay's Defense:

There is no evidence of damage to biological resources resulting from the activities conducted by Kay on the parcel [APN 4464-022-001 and 4464-022-010]. To date, even though the Commission asserts it as its basis for issuing the Notices, the Commission has presented no evidence or report of any kind that Kay's brush clearance, repair, maintenance, or use of the roads has been detrimental to biological resources. On the other hand, Kay has presented evidence to the Commission from biologist Steve G. Nelson that Kay's activities have not caused any marked damage to resources and, in fact, have been beneficial to the parcel and wildlife.

"The Vegetation in the areas in question consists of mixed chaparral, and not coastal sage scrub. The dominant plant species throughout the area consist of robust shrub species that grow to more than six feet in height and form extremely dense stands (chamise, canothus, manzanita, and toyon). Mixed chaparral is not considered by any authoritative agency as either coastal sage scrub or sensitive vegetation."

Commission's Response:

Kay does not provide evidence that the development conducted by Kay is "beneficial to wildlife." In fact, in a June 11, 2003 letter, Biologist, Steve G. Nelson states: "Interestingly, and not to be misunderstood to mean that roads through habitat areas are necessarily beneficial to wildlife, it is plausible to expect the roads are used by larger mammals to facilitate their movement through the area in light of the surrounding dense chaparral." Staff does not dispute the fact that large mammals such as deer will in fact utilize trails and roads, however this is not evidence that construction of roads and clearance of vegetation are beneficial to wildlife, nor does it address negative impacts of road construction and vegetation clearance on wildlife, water quality, and visual resources or provide a defense to violations of the Coastal Act. In fact, Schmitz has indicated that Kay is interested in utilizing the roads to a commercial "big game hunting range."

Mr. Nelson asserts that Chaparral of the Santa Monica Mountains is not considered “sensitive vegetation.” The Commission has found that the vegetative community of site meets the definition of ESHA under the Coastal Act. Section 30107.5 of the Coastal Act defines environmentally sensitive areas as “Any area in which plant or animal life or their habitats are either rare or especially valuable because of their special nature or role in an ecosystem and which could be easily disturbed or degraded by human activities and developments.”

On July 22, 2003, Dr. John Dixon, Coastal Commission biologist, conducted a site visit to the area, and confirmed that the site is substantially classified as ESHA (chaparral habitat). The value of chaparral habitat is well documented by the Coastal Commission. In a memorandum dated March 25, 2003, entitled, “*Designation of ESHA in the Santa Monica Mountains*” Dr. Dixon confirms, “because of its important roles in the functioning of the Santa Monica Mountains Mediterranean ecosystem, and its extreme vulnerability to development, chaparral within the Santa Monica Mountains meets the definition of ESHA under the Coastal Act.”⁸

In adopting the local Coastal Program (“LCP”) for the City of Malibu on September 13, 2002, the Commission recognized the importance of chaparral ESHA as an integral part of the Santa Monica Mountains ecosystem. The LUP specifically identifies several acres of the subject properties as ESHA, including oak woodlands and significant watersheds. In addition, three blue line streams identified by the U.S. Geological Survey are identified on the parcels.

Other entities have also recognized the importance of this ecosystem. The subject properties are surrounded by, and are contiguous with, significantly undeveloped areas of the Santa Monica Mountains region, including large tracts of National Park Service lands. The *Los Angeles County Significant Ecological Area Update Study 2000*, prepared for the Los Angeles County Department of Regional Planning, includes the subject properties in a proposed Significant Ecological Area (“SEA”), which includes approximately 99,430 acres of land in the Santa Monica Mountains.

The Los Angeles County General Plan identifies SEAs as “ecologically important fragile land and water areas that are valuable as plant or animal communities and often important to the preservation of threatened or endangered species. Each SEA includes areas that contain examples of plants and animals that cumulatively represent biological diversity. Preservation of this biological diversity is the main objective of the SEA designation and connecting important natural habitats plays an important role in maintaining biotic communities.”⁹

The Santa Monica Mountains North Area Plan component of the Los Angeles County General Plan further states that “Coastal sage scrub, chaparral, and rock outcrops tend to support similar species, with such reptiles as western fence lizards, western whiptails, western rattlesnakes, and

⁸ Memorandum from John Dixon to Ventura Commission staff entitled “Designation of ESHA in the Santa Monica Mountains,” dated March 25, 2003. See attached exhibit 6.

⁹ Los Angeles County General Plan.

gopher snakes; birds such as towhees, sparrows, California thrashers, bushtits, and wrentits; and mammals such as bats, woodrats, mule deer, and bobcats.”¹⁰

Violators’ Defenses and Commission’s Response
PARCEL 4464-022-010, Owned by PANORAMA RANCH, LLC

Kay’s Defense:

No Pads have been graded.

Commission’s Response:

During the site visit on May 8, 2003, staff observed a small, flat graded pad covered with 2-4 inches of freshly chipped vegetation located on Panorama Ranch, LLC Parcel 4464-022-010. Staff asked Kay what the purpose of the graded pad was. Both Kay and Schmitz insisted the graded area was “natural,” and that no grading had occurred. On August 4, 2003, staff met with Schmitz and again observed the graded pad site. Staff measured the graded area, which is approximately 350 square feet, with approximately six inches to one foot of cut soil on the south side, and one to three feet of fill on the northern side. The graded fill pad is located at the end of a section cleared of chaparral approximately 10 to 20 feet wide and 150 feet long, which culminates at a blue line stream adjacent to the border of National Park Service property to the east.

During the meeting on August 4, 2003, Schmitz admitted that the grading was the “beginning of a new road.” However, Schmitz protested the description of the graded area as a “pad,” claiming that this would distort the Commissioner’s view of the development. Staff advised Schmitz that while the graded pad could in fact appear to be the beginning of a new road, it is nonetheless an unpermitted graded pad. Schmitz requested that staff issue an amendment to the EDCDO and NOI, retracting allegations of a graded pad. Staff subsequently advised Schmitz that no such retraction would be issued since the description was accurate.

In addition, Kay cleared a second area on this parcel, approximately 6,000 square feet in size, approximately 250 feet south of graded fill pad noted above, and within 100 feet of National Park Service property boundary. During the meeting on November 10, 2003, staff asked Schmitz what the purpose of the cleared area was; Schmitz replied that it was cleared because it was “just there,” and Schmitz asserted that it had always been there. Staff asked Schmitz how the laborers knew where to locate the site given the density of the brush at the site. Schmitz replied, “They just knew.”

Kay’s Defense:

¹⁰ The Santa Monica Mountains North Area Plan was prepared by the Los Angeles County Department of Regional Planning, and was adopted by the Los Angeles County Board of Supervisors, October 24, 2000.

Kay should be exonerated from any responsibility for all of the alleged violations regarding the Panorama Ranch Property No. 2 for the following reasons. Specifically, the work performed on the subject parcel consisted of the following:

- 1) Clearance and trimming of mixed chaparral from existing roadways.**
- 2) Clearance and removal of fallen rocks and boulders from existing roadbeds.**

The cleared and repaired area on this parcel is .68 acres of the 44.58 acre parcel, or about 1.51% of the entire property. About 2, 950 linear feet of existing roadway was cleared.

The Roads and Trails Pre-Date The Coastal Act.

The roads and trails located on this parcel pre-date the Coastal Act (See Declaration of James A. Kay, Jr., the Biologists Report and Addendum, map, and Whittier College 1953 aerial photo, attached hereto as Exhibits N, D, C, and B.) As such, Kay has a vested right per § 30608 to use, repair, and maintain the existing roadway and does not require a CDP to continue to do so.

No Development or Coastal Act Violations Have Occurred on the Property.

The Work performed on the property does not constitute development as defined by § 30106.

Exemptions to §30106 are contained in §30610. Specifically, §30610(d) provides exemptions from the CDP requirement.

Here, the work performed on the subject property does not constitute development as defined by § 30106 and is exempt from CDP requirements per § 30610. Courts have held for example, that development under § 30106 may include activities such as: a change in density or intensity of use of land (Stanson v. San Diego Coast Regional Commission) (App. 4 Dist. 1980) 101 Cal.App.3d 38.) a division of land (Ojavan Investors, Inc. v. California Coastal Commission, (App. 2 Dist. 1997) 54 Cal.App.4th 373), and lot line adjustments (La Fe, Inc. v. Los Angeles County (App. 2 Dist. 1999) 73 Cal.App.4th 231). All of these cases can be easily distinguished from this situation. The brush clearing, repair, and maintenance has not resulted in a change in the density of the use of land, nor has it resulted in an addition to, or enlargement or expansion of the existing roadways or trails. The work undertaken was all preformed by hand tools (picks and shovels).

In addition, the work performed on the subject property does not constitute repair and maintenance activities that require a permit under § 13252 of Title 14 of the California Administrative Code.

Furthermore, any allegations that repair and maintenance activity occurred within 20 feet of streams and/or in environmentally sensitive habitat area are entirely untrue. There are no streams on this parcel in the vicinity of existing roads or trails. No pads have been graded, no culverts have been constructed, and no railroad ties have been placed on this Property.

Commission's Response:

As noted in the sections above, the Commission has not determined that the roads and pads on parcel 4464-022-010 predate the Coastal Act, nor have the Respondents submitted a claim of Vested Rights, pursuant to the Commission's regulations, seeking such a determination. The road construction is not "repair and maintenance." Staff has confirmed that unpermitted development requiring a coastal development permit (as set forth in Coastal Act §30106) has occurred within 20 feet of a designated blue-line stream, and in environmentally sensitive habitat. Specifically, major vegetation was cleared from approximately 3,120 linear feet of roadway, resulting in approximately 31,000 square feet of vegetation clearance.

In addition, a cleared swath of vegetation extends into a designated blue line stream of the parcel near the eastern boundary of the property. On November 10, 2003, Kay's representative Schmitz stated that this vegetation clearance was a "mistake," but asserts that it is not a violation of the Coastal Act.

Kay's Defense:

There Is No Ongoing Biological Damage.

There is no evidence of damage to biological resources resulting from the activities conducted by Kay on the parcel. To date, even though the Commission asserts it as its basis for issuing the Notices, the Commission has presented no evidence or report of any kind that Kay's brush clearance, repair, maintenance, or use of the roads has been detrimental to biological resources. On the other hand, Kay has presented evidence to the Commission from Biologist Steven G. Nelson that Kay's activities have not caused any marked damage to resources and, in fact, have been beneficial to the parcel and wildlife.

Commission's Response:

Biological damage has occurred on the APN 4464-022-010 due to destruction of ESHA. Additionally, On May 8, August 15, and November 10, 2003, staff observed active erosion on the parcel resulting from destabilization of slopes from removal of vegetation and excavation and sidecasting of soil and rock for road construction on steep slopes. The subject properties are located at the headwaters of several drainages, including three blue line streams and at least one designated significant watershed area. Excavation and sidecasting of unconsolidated soil leads to increased sedimentation rates in adjacent streams, causing adverse impacts to fish and other aquatic wildlife.

Staff observed soil and rock material piled against the trunks and stems of oak trees and native chaparral species, damaging native vegetation on APN 4464-022-010.

Some chaparral plant species, including species found on this parcel, rely on underground woody structures such as woody taproots to sprout following removal of surface vegetation due to events such as fire. Staff confirmed that subsurface plant material had been removed at various locations on the parcels, including root material. Removal of the root material of these plants will result in their failure to regenerate.

Finally, the fact that the unpermitted grading was performed using primarily hand tools is not

Kay's Defense:

There is no Basis to Issue a §30811 Restoration Order.

Section 30811 authorizes the Commission to order restoration of a site it finds three things. One, that the development has occurred without a CDP; two, that the development is inconsistent with what is allowed under the Coastal Act; and, three, that the development is causing continuing resource damage. Based on the foregoing description of the activities that took place on the parcel, nothing occurred on the remaining portion of this parcel that qualifies as development. Therefore, there has been no violation of the Coastal Act and the Commission has no basis upon which to issue a restoration order with respect to this property. In addition, the required finding that resource damage has occurred cannot be made. {See Biologist's Report and Addendum}.

Commission's Response:

The unpermitted development meets the criteria required for the Commission to issue a Restoration Order pursuant to Section 30811. As in the preceding sections of this report, the roads and pads do not predate the Coastal Act; the development is inconsistent with the Coastal Act; and the development is causing continuing resource damage.

Kay's Defense:

Kay Should Not be Held Civilly Liable Under §30820. First, Kay solicited advice regarding what lawful activities he could undertake on the parcel without a CDP. After reviewing such advice, Kay was careful to operate within the limitations of the activities not requiring a CDP. Second, Kay ceased all repair and maintenance work immediately upon notice from the Commission and receipt of the Commission's May 8, 2003 Notice, and has not conducted any activities on the property since that date. (See Schmitz's May 12, May 13, and May 15 letters and Declaration of James A. Kay, Jr., attached hereto as Exhibits G, H, I, and N.) Kay even abided by the Commission request that he cease using the roads, despite the Commission's lack of a legal basis for such request. Third, the Commission has presented no biological reports documenting the basis for its allegations and of evidence of

ongoing biological damage to resources. (See Biologist's Report and Addendum, attached hereto as Exhibit D).

Commission's Response:

Kay did not solicit advice from Coastal Commission staff regarding what lawful development activities he could undertake without a CDP. The fact that Kay sought, and allegedly received erroneous guidance from an unidentified source does not absolve Kay of responsibility for Coastal Act violations. Kay has performed and maintained unpermitted development on adjacent property in violation of the Coastal Act, and Commission Enforcement staff has repeatedly advised Kay regarding requirements for coastal development permits within the Coastal Zone since 1997. In addition, in the recent past, from May 2003 until the present, Kay and his representatives have been repeatedly informed of the Coastal Act requirements as they pertain to these parcels (See Exhibits 9 through 13). Despite this, Kay has continued to conduct and maintain unpermitted development at the site.

As noted above, contrary to the Respondents assertion that the site is not ESHA, Commission Biologist Dr. John Dixon confirms that native chaparral habitat in the Santa Monica Mountains is meets the definition of ESHA under the Coastal Act.

Finally, as noted in relevant sections above, the properties are located within the Coastal Zone, and ongoing damage is occurring to resources that are afforded protections under the policies of Chapter 3 of the Coastal Act, including but not limited to water quality, environmentally sensitive wildlife habitat, and the visual quality of coastal areas.

Staff recommends that the Commission issue the following Cease and Desist and Restoration Orders:

CEASE AND DESIST AND RESTORATION ORDERS

CEASE AND DESIST ORDER CCC-03-CD-015

Pursuant to its authority under Public Resource Code §30810, the California Coastal Commission hereby finds that unpermitted development has occurred on the site in violation of the Coastal Act, and hereby orders and authorizes James A. Kay, Jr., his agents, contractors and employees, Deer Valley Ranch, LLC, Panorama Ranch, LLC, Communications Relay Corporation, and any person(s) acting in concert with any of the foregoing (hereinafter referred to as “Respondents”) to cease and desist from: 1) removal of major vegetation, including but not limited to removal of native chaparral, riparian habitat, and damage to native oak trees; grading and clearing of new roads and pads; streambed alteration, including but not limited to grading, filling, and manipulation of channel substrate, installation of metal culverts and creosote-treated railroad ties, and construction of an Arizona crossing in a blue line stream; and construction of unpermitted structures including but not limited to metal gates, metal and wood gate posts with chain barriers set with concrete bases, and from conducting any other unpermitted development at the site which would require a CDP, and 2) maintaining on said property any of the above referenced unpermitted development or as otherwise referenced in Section IV.A of this report.

Within 45 days of the issuance of this order, and as necessary thereafter, Commission staff will conduct a site visit to confirm compliance with the terms and conditions of the Order.

RESTORATION ORDER CCC-03-RO-009

Pursuant to its authority under Public Resource Code §30811, the California Coastal Commission finds that the development is 1) unpermitted, 2) inconsistent with the Coastal Act, and 3) causing continuing resource damage, and hereby orders and authorizes James A. Kay, Jr., his agents, contractors and employees, Deer Valley Ranch, LLC, Panorama Ranch, LLC, Communications Relay Corporation, and any person(s) acting in concert with any of the foregoing (hereinafter, “Respondents”) to restore the subject properties to the extent provided below to the condition it was in prior to the undertaking of the development activity that is the subject of this order. Accordingly, the persons subject to this order shall fully comply with the following conditions:

- A. Within 14 days of issuance of this Restoration Order, Respondents shall submit for the review and approval of the Executive Director of the Commission a Restoration, Revegetation and Monitoring Plan. The Executive Director may extend this time for good cause.

The Restoration, Revegetation and Monitoring Plan (hereinafter referred to as the “Restoration Plan”) shall be prepared by a qualified restoration ecologist and a qualified geologic engineer, as described in section (d), below and shall include the following:

- a) Goals and Performance Standards. Section A of the Restoration Plan shall present the following goals of the Restoration and Revegetation Project.

1. Restoration of the property to the condition that existed prior to the unpermitted development through restorative grading of the topography in the areas impacted by the unpermitted development. Restorative grading plans should include sections showing original and finished grades, and quantitative breakdown of grading amounts (cut/fill), drawn to scale with contours that clearly illustrate the original topography of the subject site prior to any grading disturbance. The location for any excavated material to be removed from the site as a result of the restoration of the impacted areas shall be identified. If the dumpsite is located in the Coastal Zone and is not an existing sanitary landfill, a coastal development permit shall be required.
2. Revegetation of all graded areas and areas impacted by the removal of major vegetation so that disturbed areas have a similar plant density, total cover and species composition as that typical of undisturbed chaparral vegetation in the surrounding area within 5 years from the initiation of revegetation activities.
3. Eradication of non-native vegetation within the areas subject to revegetation and those areas that are identified as being subject to disturbance as a result of the restoration and revegetation activities.
4. Minimization of the amount of artificial inputs such as watering or fertilizers that shall be used to support the revegetation of the impacted areas. The Restoration and Revegetation Project will not be successful until the revegetated areas meet the performance standards for at least three years without maintenance or remedial activities other than nonnative species removal.
5. Stabilization of soils so that soil is not transported off the subject property or into the chaparral or riparian ESHA and so that slumping, gullyng, or other surficial instability does not occur.
6. Section A of the Restoration Plan shall also include specific ecological and erosion control performance standards that relate logically to the restoration and revegetation goals. Where there is sufficient information to provide a strong scientific rationale, the performance standards shall be absolute (*e.g.*, specified average height within a specified time for a plant species).
7. Where absolute performance standards cannot reasonably be formulated, clear relative performance standards will be specified. Relative standards are those that require a comparison of the restoration site with reference sites. The performance standards for the plant density, total cover and species composition shall be relative. In the case of relative performance standards, the rationale for the selection of reference sites, the comparison procedure, and the basis for judging differences to be significant will be specified.

Reference sites shall be located on adjacent areas vegetated with chaparral undisturbed by development or vegetation removal, within 2000 feet of the subject property with similar slope, aspect and soil moisture. If the comparison between the revegetation area and the reference sites requires a statistical test, the test will be described, including the desired magnitude of difference to be detected, the desired statistical power of the test, and the alpha level at which the test will be conducted. The design of the sampling program shall relate logically to the performance standards and chosen methods of comparison. The sampling program shall be described in sufficient detail to enable an independent scientist to duplicate it. Frequency of monitoring and sampling shall be specified for each parameter to be monitored. Sample sizes shall be specified and their rationale explained. Using the desired statistical power and an estimate of the appropriate sampling variability, the necessary sample size will be estimated for various alpha levels, including 0.05 and 0.10.

b) Restoration and Revegetation Methodology. Section B of the Restoration Plan shall describe the methods to be used to stabilize the soils and revegetate the impacted areas. Section B shall be prepared in accordance with the following directions:

1. The plan shall be designed to minimize the size of the area and the intensity of the impacts from disturbances caused by the restoration of the impacted areas. Other than those areas subject to revegetation activities, the areas of the site and surrounding areas currently vegetated with chaparral shall not be disturbed by activities related to this restoration project. Prior to initiation of any activities resulting in physical alteration of the subject property, the disturbance boundary shall be physically delineated in the field using temporary measures such as stakes or colored tape.
2. Specify that the restoration of the site shall be performed using hand tools wherever possible, unless it has been demonstrated to the satisfaction of the Executive Director that heavy equipment will not contribute significantly to impacts to resources protected by the Coastal Act, including, but not limited to geological instability, minimization of landform alteration, erosion and impacts to native vegetation and the stream.
3. The qualified geologic engineer and restoration ecologist shall specify the methods to be used after restoration to stabilize the soil and make it capable of supporting native vegetation. Such methods shall not include the placement of retaining walls or other permanent structures, grout, geogrid or similar materials. Any soil stabilizers identified for erosion control shall be compatible with native plant recruitment and establishment. The plan shall

specify the erosion control measures that shall be installed on the project site prior to or concurrent with the initial grading operations and maintained until the impacted areas have been revegetated to minimize erosion and transport of sediment outside of the disturbed areas. The soil treatments shall include the use of mycorrhizal inoculations of the soil, unless it can be demonstrated to the satisfaction of the Executive Director that such treatment will not likely increase the survival of the plants to be used for revegetation.

4. Describe the methods for revegetation of the site. All plantings shall be the same species, or sub-species, if relevant, as those documented as being located in the reference sites. The planting density shall be at least 10% greater than that documented in the reference sites, in order to account for plant mortality. All plantings shall be performed using native plants that were propagated from plants as close as possible to the subject property, in order to preserve the genetic integrity of the flora in and adjacent to the revegetation area.
 5. Describe the methods for detection and eradication of nonnative plant species on the site. Herbicides shall only be used if physical and biological control methods are documented in peer-reviewed literature as not being effective at controlling the specific nonnative species that become established in the revegetation area. If herbicides are to be used in the revegetation area, specify the precautions that shall be taken to protect native plants and workers, consistent with all applicable laws and regulations.
 6. Specify the measures that will be taken to identify and avoid impacts to sensitive species. Sensitive species are defined as: (a) species which are listed by state or federal agencies as threatened or endangered or which are designated as candidates for such listing; (b) California species of special concern; (c) fully protected or "special animal" species in California; and (d) plants considered rare, endangered, or of limited distribution by the California Native Plant Society.
- c) Monitoring and Maintenance. Section C of the Restoration Plan shall describe the monitoring and maintenance methodology and shall include the following provisions:
1. The Respondents shall submit, on an annual basis for a period of five years (no later than December 31st each year) a written report, for the review and approval of the Executive Director, prepared by a qualified restoration ecologist and qualified geologic engineer, evaluating compliance with the performance standards. The annual reports shall include further recommendations and

requirements for additional restoration activities in order for the project to meet the goals and performance standards specified in the Restoration Plan. These reports shall also include photographs taken from pre-designated locations (annotated to a copy of the site plans) indicating the progress of recovery at the site.

2. During the monitoring period, all artificial inputs shall be removed except for the purposes of providing mid-course corrections or maintenance to ensure the long-term survival of the restoration of the project site. If any such inputs are required beyond the first two years, then the monitoring program shall be extended by an amount of time equal to that time during which inputs were required after the first two years, so that the success and sustainability of the restoration of the project site are ensured.
 3. At the end of the five-year period, a final detailed report shall be submitted for the review and approval of the Executive Director. If this report indicates that the restoration project has in part, or in whole, been unsuccessful, based on the approved performance standards, the applicant shall be required to submit a revised or supplemental plan to compensate for those portions of the original program that were not successful. The Executive Director will determine if the revised or supplemental restoration plan must be processed as a CDP, a new Restoration Order, or modification of Restoration Order CCC-03-RO-009.
- d) Appendix A shall include a description of the education, training and experience of the qualified geologic engineer and restoration ecologist who shall prepare the Restoration Plan. A qualified restoration ecologist for this project shall be an ecologist, arborist, biologist or botanist who has experience successfully completing restoration or revegetation of chaparral habitats. If this qualified restoration ecologist does not have experience in creating the soil conditions necessary for successful revegetation of chaparral vegetation, a qualified soil scientist shall be consulted to assist in the development of the conditions related to soils in the Revegetation and Monitoring Plan. A qualified geologic engineer for this project shall be a geologic engineer who has experience evaluating and designing soil stabilization projects in the Santa Monica Mountains area.
 - e) Submit interim erosion control plans for the review and approval of the Executive Director. The Interim Erosion Control Plan shall be prepared by a qualified restoration ecologist and shall include the following:
 1. The Interim Erosion Control Plan shall demonstrate that:
 - a. The following temporary erosion control measures shall be used: hay bales, wattles, silt fences.

- b. Erosion on the site shall be controlled to avoid adverse impacts on adjacent properties and resources.
 2. The Interim Erosion Control Plan shall include, at a minimum, the following components:
 - a. A narrative report describing all temporary runoff and erosion control measures to be used and any permanent erosion control measures to be installed for permanent erosion control.
 - b. A detailed site plan showing the location of all temporary erosion control measures.
 - c. A schedule for installation and removal of temporary erosion control measures, in coordination with the long term restoration, revegetation and monitoring plan discussed below.
- B. Within 30 days of the approval by the Executive Director of the documents submitted under paragraph A, or within such additional time as the Executive Director may grant for good cause, Respondents shall complete the following actions, in compliance with the plans approved under paragraph A:
 1. Restore the topography consistent with the Restoration, Revegetation and Monitoring Plan required by Part A of this order and as approved by the Executive Director.
 2. Submit to the Executive Director a report documenting the restoration of the topography. This report shall include photographs that show the restored site. This report shall include a topographic plan that is prepared by a licensed surveyor, shows two-foot contours, and represents the topographic contours after removal of the development and grading to achieve restoration of the topography to the maximum extent possible, as described in paragraph A.
- C. Within 15 days of the approval by the Executive Director of the documents submitted under paragraph B2 above, or within such additional time as the Executive Director may grant for good cause, revegetate the disturbed areas with native plants, following the specifications of the Restoration Plan approved by the Executive Director, pursuant to paragraph A above.
- D. In accordance with the schedule set forth in the Restoration Plan, approved by the Executive Director pursuant to paragraph B above, submit to the Executive Director monitoring reports.
- E. After approval of the monitoring reports by the Executive Director, implement within such timeframe as the Executive Director may specify all measures specified by the Executive Director to ensure the health and stability of the restored areas, as required by the Restoration Plan.

- F. For the duration of the restoration project, including the monitoring period, all persons subject to this order shall allow the Executive Director of the Commission, and/or his/her designees to inspect the subject property to assess compliance with the Restoration Order, subject to twenty-four hours advance notice.

Persons Subject to the Orders

James A. Kay, Jr., his agents, contractors and employees, Deer Valley Ranch, LLC, Panorama Ranch, LLC, Communications Relay Corporation, and any person(s) acting in concert with any of the foregoing

Identification of the Property

The property that is subject to these orders is located north of Castro Motorway and east of Latigo Canyon Road in Los Angeles County and is described as follows:

Cease and Desist Order:

- APN 4464-019-010 (80-acres) owned by Deer Valley Ranch, LLC
- APN 4464-019-008 (40-acres) owned by Panorama Ranch, LLC.
- APN 4464-022-001 (25 acres) owned by Communications Relay Corporation
- APN 4464-022-010 (44.5 acres) owned by Panorama Ranch, LLC
- APN 4464-019-900 (which includes approximately 11 acres in the Coastal Zone) owned by National Park Service

Restoration Order:

- APN 4464-019-010 (80-acres) owned by Deer Valley Ranch, LLC
- APN 4464-019-008 (40-acres) owned by Panorama Ranch, LLC.
- APN 4464-022-001 (25 acres) owned by Communications Relay Corporation
- APN 4464-022-010 (44.5 acres) owned by Panorama Ranch, LLC

Description of Unpermitted Development

Unpermitted removal of major vegetation and disturbance of Environmentally Sensitive Habitat, including but not limited to removal of native chaparral and damage to native oak trees; grading and clearing of new roads and pads; unpermitted streambed alteration, including but not limited to grading, filling, and manipulation of channel substrate, installation of metal culverts and creosote-treated railroad ties, and construction of an Arizona crossing in a blue line stream; and construction of unpermitted structures including but not limited to metal gates, metal and wood gate posts with chain barriers set with concrete bases.

Effective Date and Terms of the Orders

The effective date of these orders is December 12, 2003. The orders shall remain in effect permanently unless and until modified or rescinded by the Commission.

Findings

These orders are issued on the basis of the findings adopted by the Commission on December 12, 2003, as set forth in the attached document entitled “**RECOMMENDED FINDINGS FOR RESTORATION ORDER CCC-03-RO-009 and CEASE AND DESIST ORDER CCC-03-CD-015**”.

Compliance Obligation

Strict compliance with the orders by all parties subject thereto is required. Failure to comply strictly with any term or condition of the orders, including any deadline contained in the orders, will constitute a violation of the orders and may result in the imposition of civil penalties of up to SIX THOUSAND DOLLARS (\$6,000) per day for each day in which such compliance failure persists, in addition to any other penalties authorized under Section 30820. The Executive Director may extend deadlines for good cause.

Deadlines

Deadlines may be extended by the Executive Director for good cause. Any extension request must be made in writing to the Executive Director and received by Commission staff at least 10 days prior to expiration of the subject deadline.

Appeal

Pursuant to PRC § 300803(b), any person or entity against whom this order is issued may file a petition with the Superior Court for a stay of this order.

Executed in San Francisco on December 12, 2003, on behalf of the California Coastal Commission.

Peter Douglas, Executive Director

Exhibits

1. Location Map
2. Assessor's Parcel Locations Map
3. Master Site Plan (Reduced copy of map submitted with July 17, 2003 SOD)
4. Aerial photos indicating unpermitted road and pad development
5. Photographic documentation of onsite violations
6. Memorandum from Commission Biologist, John Dixon, PhD., March 25, 2003
7. Statement of Defense, dated July 17, 2003
8. Statement of Defense, dated November 12, 2003
9. Notice of Intent to Commence Restoration Order Proceedings, June 27, 2003
10. Notice of Intent to Commence Restoration Order Proceedings, July 1, 2003
11. Notice of Intent to Commence Cease and Desist Order Proceedings, October 23, 2003
12. ED Cease and Desist Order ED-03-CD-146, July 2, 2003
13. ED Cease and Desist Order ED-03-CD-147, October 24, 2003